

**REQUEST FOR CITY COUNCIL CONSIDERATION**

Meeting Date: November 1, 2021

Agenda Item: 5D	Prepared by: Chris Noury, City Attorney
Agenda Section: Consent: Ordinance. First Reading	Date: October 26, 2021
Subject: An ordinance to lease office space and to authorize the use of a portion of the pool and other areas of the Aquatic and Fitness Center to McLeod Seacoast Hospital	Division: Legal

**Background:**

Attached for Council's consideration is a Premises and Space Use Agreement between the City and McLeod Seacoast Hospital (McLeod). The term of the Agreement is for one year which will renew automatically for 5 additional one-year terms unless otherwise terminated as authorized in the Agreement. The Agreement provides that McLeod will lease two offices containing approximately 124 square feet and 107 square feet, respectively, for \$20 per square foot which is equivalent to an annual rental rate of \$4,620.

McLeod will also be authorized to utilize a portion of the warm water pool for physical therapy purposes; however, McLeod cannot exceed more than 8 participants (including McLeod staff and patients) in the warm water pool during a single therapy session. McLeod will also be authorized to use the fitness room and the basketball courts for patient rehabilitative purposes but the lease requires that McLeod coordinate the Aquatic and Fitness Center staff at least a month in advance regarding the use of the basketball courts. McLeod shall pay to the City \$6.00 per patient per visit for the use of the above referenced areas of the Aquatic and Fitness Center.

**Recommended Action:**

Approval of the ordinance on first reading

Reviewed by City Manager		Reviewed by City Attorney
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Council Action:  
Motion By \_\_\_\_\_ 2<sup>nd</sup> By \_\_\_\_\_ To \_\_\_\_\_

**AN ORDINANCE**

**AN ORDINANCE OF THE CITY OF NORTH MYRTLE BEACH TO LEASE TO MCLEOD LORIS SEACOAST HOSPITAL (McLEOD) TWO OFFICES LOCATED WITHIN THE AQUATIC AND FITNESS CENTER FOR A TERM OF ONE YEAR FOR AN ANNUAL RENTAL OF FOUR THOUSAND SIX HUNDRED AND TWENTY DOLLARS AND TO AUTHORIZE McLEOD TO USE A PORTION OF THE WARM WATER POOL FOR PHYSICAL THERAPY PURPOSES AND TO USE THE FITNESS ROOM AND BASKETBALL COURTS FOR THE SAME PURPOSES FOR SIX DOLLARS PER PATIENT PER VISIT.**

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL FOR THE CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA:**

**Section 1:** The attached Premises and Space Use Agreement between the City and McLeod is hereby approved.

**Section 2:** The City Manager is authorized to sign the Agreement on behalf of the City.

**Section 3:** The ordinance shall become effective upon the date of passage.

DONE, RATIFIED AND PASSED, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021.

ATTEST:

\_\_\_\_\_  
Mayor Marilyn Hatley

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

FIRST READING: 11.1.2021

SECOND READING: \_\_\_\_\_

REVIEWED:

\_\_\_\_\_  
City Manager

ORDINANCE: 21-45

## PREMISES AND SPACE USE AGREEMENT

This Premises and Space Use Agreement (“Agreement”), effective, July 16, 2020 through July 15, 2025 (“Effective Date”), is made by and between **McLeod Loris Seacoast Hospital dba McLeod Seacoast**, a non-profit corporation organized and governed under the laws of the State of South Carolina and exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (“MLSH”), and **City of North Myrtle Beach Aquatic and Fitness Center**, located at 1100 Second Avenue South, North Myrtle Beach, South Carolina 29582 (“NMB AFC”)

### RECITALS

WHEREAS, NMB AFC is an exercise facility which offers health and wellness services through its aquatic and fitness environments to the residents of North Myrtle Beach, Horry County, visitors and members of the public; and

WHEREAS, MLSH is a regional medical center that offers emergency, hospital care and related healthcare services to the Horry County community, visitors and to those in need; and

WHEREAS, MLSH is in need of certain facilities that will allow for the provision of aquatic therapy and related exercise therapies to its patients as dictated by medical necessity and physician order in an effort to achieve their fitness and physical rehabilitation goals; and

WHEREAS, NMB AFC has facilities available that will meet such purpose and has agreed to lease certain facility space as well as office space in order to conduct such rehabilitative services in accordance with the terms and conditions outlined below.

NOW, THEREFORE, the parties hereby agree as follows:

### TERMS AND CONDITIONS

1. Office Space. NMB AFC shall lease two (2) office spaces within its facility to MLSH. Such office space is depicted on Exhibit “A”, which is attached hereto and made a part hereof.

- a) The square footage of the two (2) office spaces shall be approximately 124 and 107 square feet respectively.
- b) The lease rate for the office space shall be Twenty and 00/100 Dollars (\$20.00) per square foot which is equivalent to a yearly rental rate of Four Thousand Six Hundred Twenty and 00/100 Dollars (\$4,620.00), which shall be paid in monthly installments of Three Hundred Eighty Five and 00/100 Dollars (\$385.00). Such rental rate shall be inclusive of all utilities, HVAC, trash pickup, cleaning services, taxes as well as the repair and maintenance of the NMB AFC.
- c) MLSH shall, at its own expense, be permitted to display the McLeod Health Logo in the NMB AFC Atrium as well as adjacent to each office space. Such Logos and the placement and location of the same shall be approved in advance by The Director of the North Myrtle Beach Parks and Recreation Department or his/her designee, which such approval shall not be unreasonably withheld or delayed.

2. Aquatic Therapy and Rehabilitation Space. MLSH shall be permitted to lease a designated area of the warm water pool in order to provide rehabilitative services to its patients.

As required by Medicare regulations the following conditions shall apply:

- a) The area of the warm water pool leased to MLSH shall be restricted to the exclusive use of MLSH patients during such days and times agreed to by authorized representatives of the parties. The area designated for MLSH use shall be determined on a daily basis by NMBAFC staff and MLSH staff. MLSH shall provide barriers (lane markers or similar devices) for the purpose of identifying the area used by MLSH.
- b) In order coordinate rehabilitative care in an effective and efficient manner the days and times that the warm water pool will be utilized shall be established on no less than a monthly basis in advance in writing. Such schedule shall be finalized no later than the 20<sup>th</sup> day of the preceding month. Any change to this schedule shall be upon the agreement of authorized representatives of the parties.
- c) Services shall only be rendered in the presence of an authorized MLSH therapy representative.

In addition, the use of the Aquatic Therapy and/or Rehabilitative Space is subject to the following conditions:

- a) MLSH shall be permitted to utilize the warm water pool, the fitness room and Monday through Friday between the hours of 7am and 7pm. The parties acknowledge that the duration of the sessions shall range between 30 and 90 minutes.
- b) MLSH shall be permitted to use the basketball courts. However, use of the basketball courts shall be established on no less than a monthly basis in advance in writing. Such schedule shall be finalized no later than the 20<sup>th</sup> day of the preceding month and shall be subject to the final approval of the authorized representative for the NMBAFC which approval shall not be unreasonably withheld or delayed.
- c) Each Aquatic therapy and/or Rehabilitative therapy session in the warm water pool, the fitness area and the basketball courts shall not exceed eight (8) participants in total (this includes MLSH patients and staff).
- d) Each Rehabilitative therapy session utilizing either the fitness room or basketball courts shall be coordinated in advance by authorized representatives of the parties.
- e) The fee to utilize either the Aquatics or Rehabilitative Space shall be Six and 00/100 Dollars (\$ \$6.00) per patient per visit.
- f) MLSH shall procure, maintain, and comply with all permits, licenses, and health and safety requirements required for the use of the Aquatic Therapy and Rehabilitative Space. NMBFAC will promptly comply with and cure all violations of applicable law, regulations, rules, codes and/or ordinances which are or may be enacted regarding the use of the Aquatic Therapy and Rehabilitative Space.

3. Certified Athletic Trainer Services. MLSH shall provide the services of a Certified Athletic Trainer (“CAT”) to conduct injury screening services at NMBAFC one (1) day per week for a maximum three (3) hour period during the Term of this Agreement. MLSH shall not be considered in breach of the Agreement if the CAT is not available to provide the screening services due to circumstances beyond its reasonable control. In addition, the parties acknowledge that the in-kind value of the CAT Services is Thirty and 00/100 Dollars (\$30.00) per hour.

4. Compensation. MLSH will make payment to NMBAFC for the lease of the Office Space and use of the Aquatics and/or Rehabilitative for the preceding month no later than the 5<sup>th</sup> day of the applicable month. The parties intend the compensation paid under this Agreement to be commercially

reasonable, consistent with fair market value in an arm's-length transaction, and not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between MLSH and NMBAFC.

5. Term and Termination. The "Term" of this Agreement shall commence on the Effective Date and will extend for a period of one (1) year. This Agreement shall automatically renew for additional One (1) year terms under the same terms and conditions up to a maximum of Five (5) years in total unless sooner terminated as specified herein. This Agreement may be terminated by either party hereto without cause at any time, provided that the terminating party provides the non-terminating party with no less than thirty (30) days prior written notice of such intent to terminate the Agreement.

6. Confidentiality. During the Term of this Agreement, it is anticipated that NMBAFC may learn confidential and/or proprietary information of MLSH and/or its patients. NMBAFC warrants and represents that it and its employees, staff and third parties will keep confidential and will not use information which of which it may become aware unless an authorized representative of MLSH consents to such disclosure. The obligations of non-use and confidentiality shall survive the termination of this Agreement.

7. Conflicts of Interest. The parties represent that each is not aware of any relationship with third parties, including competitors, which would present a conflict of interest with the facility space use, or which would prevent a party from carrying out the terms of this Agreement. Each party agrees to advise the other of any such relationships that may arise during the Term or Terms of this Agreement.

8. No Purchase Requirements. The parties acknowledge and agree that nothing in this Agreement shall require MLSH or NMBFAC or any agent, employee, or affiliate thereof to purchase, lease, order or prescribe (or arrange for or recommend the purchase, lease, order or prescript) any product or service of the other.

9. Liability. Subject to the protections of the South Carolina Tort Claims Act, MLSH's customary malpractice and general liability insurance will apply to its employees' activities during the Term or Terms of this Agreement. Each party, to the extent permitted by South Carolina Law, will assume responsibility for its' employee's negligent acts and intentional omissions under this Agreement. A copy of such insurance coverage shall be provided upon reasonable prior written request. In addition, to the extent permitted under applicable law, each party agrees to be solely responsible for its own acts of negligence and/or reckless acts or omissions in the performance of its duties hereunder and shall be financially and legally responsible for all liabilities, costs, damages, expenses, and reasonable attorneys' fees resulting from, or attributable to any and all such acts or omissions.

10. MLSH shall provide evidence of its general liability insurance coverage during the term of the Agreement and during any renewal term of the Agreement in a minimum amount of \$2,000,000.00 per person and \$2,000,000.00 per occurrence. In addition, MLSH shall provide evidence of Workers' Compensation Insurance regarding all of its' employees who provide services at the NMBAFC. All of the insurance coverages identified above, except the worker's compensation insurance, must apply to and name the City of North Myrtle Beach as an additional insured. Each of the insurance coverages must contain a waiver of subrogation for the City.

11. Non-Waiver. No waiver by either party of the obligations, conditions, or covenants of the other party to this Agreement shall be effective unless contained in writing and signed by both parties hereto. Failure to exercise any remedy which either party may have shall not constitute a waiver of any obligation with respect to which the other party is in default.

12. Severability. In the event any sections, sentences, clauses, or phrases of this Agreement shall be found to be invalid, void, and/or unenforceable, for any reason, neither the Agreement generally nor the remainder of this Agreement shall, as a result, be rendered invalid, void, and/or unenforceable.

13. Headings. The section headings set forth in this Agreement are for purposes of convenience only and shall have no bearing whatsoever on the interpretation or actual content of this Agreement.

14. Cooperation in the Event of Lawsuits, Audits, and Investigations. In the event that any claim, demand, suit, or other legal proceeding arising out of any matter relating to this Agreement is made or instituted by any person or entity against a party, or in the event that an audit or investigation related to this Agreement is initiated, each party shall cooperate with the other in providing all reasonable information and assistance in the defense or other disposition.

15. Governing Law. This Agreement will be construed and interpreted under and in accordance with the substantive laws of the State of South Carolina, without regard to conflicts of law principles.

16. Exclusivity. NMBFAC shall not partner with nor authorize any hospital, regional or national medical provider to render services or to maintain a presence at the Facility during the Term or Terms of this Agreement

17. Assignment. Neither party shall assign this Agreement without the prior written consent of an authorized representative of the non-assigning party.

18. Notices. Any written notice required or allowed by this Agreement to be given to either the party shall be deemed given upon receipt by certified or registered mail, postage prepaid, properly addressed to the parties as follows:

If to MLSH:

McLeod Loris Seacoast Hospital dba McLeod Seacoast  
4000 Highway 9 East  
Little River, South Carolina 29566-7833  
Attention: Administrator

With Copy To (which shall not constitute notice):

McLeod Health  
P.O. Box 100551  
Florence, South Carolina 29502-0551  
Attention: Legal Counsel

If to NMBAFC:

City of North Myrtle Beach Aquatic and Fitness Center  
1100 Second Avenue South  
North Myrtle Beach, South Carolina 29582  
Attention: Director of Aquatic and Fitness Center

With a Copy to:

City of North Myrtle Beach  
1018 Second Avenue South  
North Myrtle Beach, South Carolina 29582  
Attention: City Attorney

And:

City of North Myrtle Beach  
1018 Second Avenue South  
North Myrtle Beach, South Carolina 29582  
Attention: Director of Parks and Recreation

19. Ineligible Entity. Each party represents to the other that it, its officers, directors, and/or employees involved in the performance of, or negotiation of this Agreement are not currently excluded, debarred, or otherwise ineligible to participate in the Federal or State Health Care Programs as defined in 42 U.S.C. § 1320a - 7b(f) ("the Federal Healthcare Programs") or the Federal Procurement or Non-Procurement Programs. This shall be an ongoing representation and warranty during the term of this Agreement. A party shall immediately notify the other of any change in the status of the representations as set forth in this section.

20. Default. The occurrence of any of the following shall constitute a default under this Agreement:

- a) (a) Failure to pay rent when due, if the failure continues for twenty (20) days after written notice has been given to MLSH.
- b) (b) Failure to perform any other provision of this Agreement if the failure to perform is not cured within thirty (30) days after written notice has been given to the defaulting party. If the default cannot be reasonably cured within thirty (30) days, the defaulting party shall not be considered in non-compliance of the Agreement if the applicable commences to cure the default within the thirty (30) day period and diligently and in good faith continues to cure the default.
- c) (c) A general assignment by a party for the benefit of creditors.
- d) (d) The filing of a voluntary petition in bankruptcy by a party or the filing of an involuntary petition by a party's creditors, said petition remaining undischarged for a period of ninety (90) days.
- e) (e) Notices given under this section shall specify the alleged default and the applicable Agreement provisions and shall demand that the defaulting party perform the provisions of this Agreement or terminate the Agreement.

21. Entire Agreement; Amendment. This Agreement, together with any Exhibits, and any later written modifications or amendments thereto, shall constitute the entire agreement between the parties with respect to the subject matter hereof and shall supersede any prior or contemporaneous agreements or understandings, whether written or oral, that the parties, their agents or representatives may have had relating to the subject matter hereof. No modification, alteration or waiver of any term, condition or covenant of this Agreement shall be valid unless in writing signed by authorized representatives of the parties.

**SIGNATURE PAGE IMMEDIATELY FOLLOWS**

IN WITNESS WHEREOF, authorized representatives of the parties hereto have caused this Premises and Space Use Agreement to be executed as evidenced by their signatures below.

**McLeod Loris Seacoast Hospital  
dba McLeod Seacoast**

**City of North Myrtle Beach Fitness and  
Aquatics Center**

\_\_\_\_\_  
Monica Vehige  
Administrator

Date: \_\_\_\_\_

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_