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November 21, 2024

Via Email – awgrady@enclawyers.com

Arey W. Grady, III, Esq.
Grady Quattlebaum, PLLC
244-A Craven Street
New Bern, NC 28560

Re: CarolinaEast Health System’s Response to Jason Jones’s Statements at November 18, 2024 Craven County Board of Commissioners Meeting

Dear Arey:

At the beginning of the Craven County Board of Commissioners meeting on November 18, 2024, Chairman Jason Jones utilized what he called “Chairman’s Privilege” to read a previously written statement about CarolinaEast Health System (“CarolinaEast”) into the public record. In those remarks, Mr. Jones demanded that the CarolinaEast Board of Directors convene a special or emergency session within an arbitrary three (3) day period to address certain agenda items unilaterally set by Mr. Jones, and then threatened to find that *“each and every board member is very likely engaging in breach of duty and inefficiency, and quite possibly misconduct in office”* if the CarolinaEast Board does not do exactly as he demanded, concluding by stating that he would *“consider using each and every authority at my disposal”* if necessary to compel their compliance. Specifically, Mr. Jones requested that the CarolinaEast Board of Directors meet (1) to provide *“a plan for investigating the internal failures that put the hospital at risk of being in default on a 50 million dollar debt”* and (2) *“to state whether the hospital intends to decrease or eliminate funding”* for certain community causes. This letter provides CarolinaEast’s response.

As explained in more detail below, CarolinaEast has never been at risk of not meeting its debt obligations, and any suggestion to the contrary is both unwarranted and misleading. The vague allegations of “internal failures” made by Mr. Jones are similarly unsupported and unfounded. CarolinaEast also has no desire or intention to eliminate charitable giving to worthy community organizations, and will honor all pledges or other financial commitments it has made. However, Mr. Jones’s demands for information about the operational and/or charitable strategic planning initiatives of a hospital authority duly created and independently operated pursuant to the North Carolina General Statutes, and threatening to punish its Board of Directors if they do not comply with his demands, is an over-reaching and unlawful abuse of process.

It should be noted that CarolinaEast's President and Chief Executive Officer, Michael Smith, attended the November 18 meeting and specifically requested permission to respond to Mr. Jones's remarks on behalf of CarolinaEast. However, Mr. Jones refused to let Mr. Smith speak. Given the gravity of Mr. Jones's remarks about CarolinaEast, including the many factual misrepresentations addressed below, CarolinaEast should have been allowed the opportunity to respond for the benefit of the public record. If Mr. Smith's request to speak had not been summarily rejected by Mr. Jones, this letter may not have been necessary as the public would then have had the benefit of hearing from both sides. Mr. Jones stated that "*The citizens of Craven County must be assured that the management of the hospital is not neglecting its duties to efficiently and appropriately monitor and attend to the business of the hospital,*" but then unilaterally denied the public the opportunity to receive such assurances from the hospital's President and Chief Executive Officer. Given Mr. Jones's overt and intentional presentation of only one side of this story to the public and his denial of the hospital's request to respond, CarolinaEast hereby provides its position below.

1. **Craven County has no legal authority to call for board meetings, set agendas, or otherwise interfere in the independent management and operation of the hospital.**

First and foremost, there is no legal basis for the Craven County Board of Commissioners to demand that the CarolinaEast Board of Directors meet at any time (let alone within 3 days) or to impose agenda items for any such meeting. CarolinaEast is a hospital authority that was created pursuant to Chapter 131E, Article 2, Part 2 of the General Statutes of North Carolina, known as the Hospital Authorities Act. Under the Hospital Authorities Act, CarolinaEast has broad and definite powers to govern itself independently and without interference from any political body. Indeed, creating and ensuring independence from political interference in hospital management and operations is exactly why the North Carolina Hospital Authorities Act was created.

The Craven County Board of Commissioners created the hospital authority for the benefit of the public in 1988. For a summary of the relevant history behind that 1988 resolution, I refer you to an email from attorney Troy Smith to the Craven County Board of Commissioners dated May 8, 2021. Mr. Smith was closely involved with the Craven County Board of Commissioners in 1988 and is well-acquainted with the history of its creation of the hospital authority. In his email, attached hereto as **Exhibit A**, Mr. Smith states that "*perhaps the most important*" reason why the hospital authority was created was "*to keep County Commissioners and other politicians in the future from injecting politics and personal agendas into the sound operation of our Hospital.*" Mr. Smith further explained that the 1988 "*Chairman and his Board were well versed in the statutory provisions of the [Hospital Authorities] Act and fully supported the conversion to an Authority to the effect that the only involvement of any kind now (and since 1988) held by the County Commissioners as to our Hospital is the approval or rejection of nominees to the Hospital Board, NOT the appointment of Authority board members or interference with our Hospital otherwise.*"

Unlike CarolinaEast with its broad statutory powers to independently manage and govern hospital operations, Craven County has no basis under the Hospital Authorities Act or otherwise to meddle in CarolinaEast's self-governance, including but not limited to requiring its Board of Directors to meet at any time or for any reason. If you are aware of any statutory or other legal authority supporting the unilateral demands made by Jason Jones on November 18, please send it to me immediately so that I may review and evaluate Craven County's legal position. Otherwise, CarolinaEast is confident that the County's unilateral directives to CarolinaEast and Mr. Jones's overt threats to its directors are not lawful. For these reasons alone, CarolinaEast will not call a special or emergency board meeting by 5:00pm today.

2. **The CarolinaEast Board of Directors is comprised of well-qualified, dedicated, and hardworking individuals who discharge their duties for the health and welfare of Craven County citizens and all patients served by the hospital.**

Second, there is no practical, legal or other basis to demand a CarolinaEast Board meeting, special or otherwise, at this time. CarolinaEast's Board meets regularly and with the intentionality that the public and the hospital's employees deserve. The CarolinaEast Board of Directors is comprised of well-qualified, dedicated, and hardworking individuals who sacrifice their time, accepting no compensation, to govern the hospital for the benefit of Craven County's citizens and beyond. The Board includes several notable individuals from the community, including the Mayor of New Bern, a member of the North Carolina House of Representatives, and a former U.S. Marine Corps Major General, among others.

Mr. Jones's vague and inflammatory allegation of CarolinaEast's "*internal failures*" was reckless, completely unsupported by evidence, and disregards the fact that the Craven County Commissioners have had at least two (2) seats on the CarolinaEast Board of Directors at all times in question, which would result in those Craven County Commissioners being complicit in the alleged (but denied) "*internal failures.*" That Mr. Jones would expressly threaten to find that "*each and every hospital board member*" is "*engaging in breach of duty and inefficiency, and quite possibly misconduct in office*" if they do not obey his demands is both insulting to CarolinaEast's hard-working Board members and an overt abuse of process.

To understand the effects of the positive stewardship of CarolinaEast's Board of Directors, one need look no further than the attached list of public awards and accolades CarolinaEast has received over the past several years for the high-quality healthcare it provides. See **Exhibit B**. CarolinaEast has been ranked by *US News and World Report* as a High Performing Hospital and by *Newsweek Magazine* among America's Best-In-State Hospitals and/or World's Best Hospitals, with special recognitions for infection prevention, cancer treatment, and rehabilitation services. CarolinaEast has consistently ranked as the number-one in-market health system for numerous services, including women's health, orthopedic care, cancer care, cardiac care, stroke care, interventional carotid care, overall surgical care, pneumonia care, interventional coronary care, heart failure treatment, major orthopedic surgery, and more. In 2024, CarolinaEast achieved a wide range of Women's Choice Awards, including America's 100 Best Hospitals for Patient Experience,

America's Best Hospitals in Cancer Care (Top 1% in U.S.), America's Best Hospitals in Heart Care (Top 3% in U.S.), America's Best Hospitals in Minimally Invasive Surgery, America's Best Hospitals in Obstetrics, America's Best Hospitals in Orthopedics, America's Best Hospitals in Patient Safety, and Highest Safety Ratings Badge. CarolinaEast achieved many of the same accolades in recent prior years. Without the continuous and profound commitments of its Board of Directors, its employees, its staff and its providers, CarolinaEast simply would not be the award-winning hospital it is today.

Examining the list of accolades and accomplishments that CarolinaEast has been able to achieve makes Mr. Jones's threat to remove "*each and every hospital board member*" if they do not bow to his unqualified demands even more disturbing and absurd. Not only is there no legal basis for the demands placed on CarolinaEast's Board of Directors by Mr. Jones as explained above, but there is also no factual basis or any evidence to even insinuate improper conduct. The strained logic of Mr. Jones's statement is further evidenced by the fact that two of CarolinaEast's Board members are also members of the Craven County Board of Commissioners, where one has served since June 2020 and the other since September 2021. Thus, if there is even a hint of credibility to the suggestion of impropriety by CarolinaEast's Board (and there is none), then the Craven County Board of Commissioners would likewise be to blame.

CarolinaEast welcomes any and all opportunities to defend the steadfast and committed actions and accomplishments of its Board of Directors. In the meantime, CarolinaEast strongly objects to any allegation of breach of duty, inefficiency, or misconduct in office by its distinguished Board members and, in the absence of any evidence to support such outlandish allegations, respectfully suggests that Mr. Jones owes it to the public he serves to retract such statements.

3. **Mr. Jones made numerous factual misstatements that must be corrected.**

In the pre-prepared written statement that Mr. Jones read into the public record the morning of November 18, Mr. Jones provided misleading and/or factually incorrect information regarding CarolinaEast's bond covenants, its lease discussions with the County, and the hospital's financial situation. CarolinaEast addresses and corrects each such statement below.

- **Bond Covenants.** Mr. Jones stated that in 2022 CarolinaEast borrowed \$52 million in bonds. That is inaccurate. Rather, in 2016, bonds were issued to finance certain hospital improvements, and CarolinaEast entered into new financing documents with its lender, Truist, to formalize the bond commitments. Because the bonds issued in 2016 were based on the London Interbank Offered Rate (LIBOR), and LIBOR was set to expire, Truist refinanced the 2016 bonds with new bonds in 2022. **At the same time, as discussed in more detail below, CarolinaEast initiated discussions with the County regarding a new lease agreement.** CarolinaEast communicated with Truist during this time to make sure that Truist was well aware of CarolinaEast's efforts related to discussions for a new lease.

At the time the bonds were re-financed in 2022, Truist committed to a 10-year extension of the financing through 2032 but reasonably reserved a right to call the bonds due if certain circumstances occurred. While Truist wanted CarolinaEast to extend or enter into a new lease with Craven County with a term that would extend through 2032, the evidence will show that Truist did not call the bonds or ever threaten to do so during the entire period of time in question. Rather, CarolinaEast kept Truist well informed of all efforts to obtain a new lease from Craven County and maintained a positive and transparent relationship with its lender throughout the entire process. For Mr. Jones to recklessly suggest that “*internal failures*” at CarolinaEast put the bonds or medical services to the public in jeopardy is a complete fiction that is not supported by the evidentiary record.

- Lease Discussions. Mr. Jones stated that “[f]or some reason unknown to your Commissioners, [December 31, 2023] passed without any effort by the hospital to get a new lease in place.” That statement is patently false, as CarolinaEast initiated discussions with the County about a new lease as early as *May 2022*—roughly *two-and-a-half years* before the 35-year/no rent lease was set to expire. As evidenced by an email dated May 17, 2022, you acknowledged as legal counsel to Craven County that CarolinaEast’s former CEO, Ray Leggett, was in discussions with Craven County Manager Jack Veit to discuss a new lease agreement. This email is attached as **Exhibit C**. Mr. Jones’s statement that there was “[no] effort by the hospital to get a new lease in place” until September of 2024 is thus highly misleading and simply untrue.

Mr. Jones also misled the public by stating that “*the County Commissioners did not know about the critical need for a new lease until September of this year, just before expiration of the old lease.*” Directly contrary to the implication that CarolinaEast did not seek to obtain a new lease from the County until a month before the 35-year/no-rent lease expired, the factual record will demonstrate that CarolinaEast dutifully and routinely held numerous meetings with Craven County representatives throughout 2024 in an effort to obtain a new lease. Specifically, CarolinaEast met with Craven County representatives on January 17, February 14, March 27, April 22, May 8, May 16, June 4, June 21, August 2, and August 27 for the sole and specific reason of trying to obtain a new lease. Most of these meetings were attended by CarolinaEast Board members Dr. Keith Bennert, Lou Cannon, Terry Morris, and President/CEO Michael Smith, as well as County Commissioners Jason Jones, ET Mitchell, Beatrice Smith, and County Manager Jack Veit. Mr. Smith met directly with ET Mitchell on May 8—at Mr. Jones’s instruction—and directly with Jack Veit for over two hours on June 21 and then again on August 2, in an effort to reach agreement on the terms of a new lease well in advance of the October 1, 2024 expiration date.

The evidence in this matter will demonstrate that the delay in CarolinaEast and Craven County being able to agree to new lease terms was driven by Jason Jones's demand for hundreds of thousands of dollars in annual rent payments from the hospital, a concept that was shocking to CarolinaEast based on its outstanding performance under the parties' prior 35-year lease *for no rent*, including **its decades-long provision of EMS services—a statutorily-imposed legal obligation of Craven County—at no cost to the County and/or taxpayer**. Nevertheless, at the meeting on August 2, 2024, the parties reached an agreement in principle and a draft lease agreement was sent to Mr. Veit as per his request on August 27, 2024. That email and the proposed draft lease reflecting the parties' agreement in principle is attached as **Exhibit D**.

CarolinaEast did not hear back from the County until September 17, 2024, when the County surprised CarolinaEast with a different and unduly onerous draft lease agreement with new terms that the parties had never discussed in any of their meetings throughout 2024. This new proposed lease is attached as **Exhibit E**. The new terms included numerous provisions attempting to assert operational control over CarolinaEast and a provision that would have required CarolinaEast to have paid approximately *\$16 million* in annual rent to the County starting in year 11 of the lease. To make matters worse, when CarolinaEast asked for a conflict waiver to secure its chosen legal counsel to advise it in the lease negotiations, the County—without explanation—flatly refused CarolinaEast's reasonable request. Fortunately, CarolinaEast was ultimately able to secure new counsel and, after many weeks of extensive negotiations, sign a new lease effective November 4, 2024. It should be noted that the original 35-year/no-rent lease never expired due to extensions agreed to by both parties throughout the negotiation process.

- **Hospital Financials**. Mr. Jones referenced certain numbers from CarolinaEast's most recent audited financial statement, but the numbers selected by Mr. Jones were highly misleading to the public. First, the numbers cited by Mr. Jones did not account for the tens of millions of dollars in charitable care the hospital provides to the citizens of Craven County and beyond every year. In fact, **in 2023 alone, CarolinaEast provided over \$71 million in charitable care to the community**. The figures cited by Mr. Jones also ignored the tens of millions of dollars CarolinaEast has invested in its facilities—all without any expectation or request for reimbursement by the County. Mr. Jones likewise failed to recognize that CarolinaEast is able to collect only about 30% of what it charges. Cherry-picking figures from a financial statement without context to advance a political agenda against CarolinaEast is not in anyone's best interest, including the public that continues to benefit from CarolinaEast's benevolence and award-winning healthcare.

Mr. Jones further misrepresented the financial realities of CarolinaEast by highlighting its cash reserves and investments. The mere existence of those cash reserves reinforces the sound financial stewardship of current and past hospital administrators. CarolinaEast's cash reserves serve a number of important purposes, most notably to ensure that hospital operations do not cease during times of disruption. Given the volatility in the hospital industry, such down years are a near certainty from time to time. To further reinforce the strategic importance of CarolinaEast's investments, **it costs roughly \$1.6 million per day to operate the hospital.** Therefore, CarolinaEast's \$418 million reserves act as a responsible rainy-day fund that will ensure approximately 9 months of operations, including the jobs required to sustain those operations, in the event of a significant market disruption.

While the hospital may occasionally decide it is appropriate to tap into its reserves to donate money to charitable causes, it would be fiscally irresponsible to do so if its annual operations revenue is insufficient. Having to suddenly pay hundreds of thousands of dollars in annual rent—for property that the State gifted to the County—is not insignificant and will have a material impact on the hospital's operations revenue. It is the fiduciary responsibility of CarolinaEast's Board of Directors and management to closely monitor such expenses and make charitable giving decisions as it sees fit based on the broad powers granted to it by the North Carolina legislature in the Hospital Authorities Act. Any unqualified demands, by the Craven County Board of Commissioners or otherwise, to redirect hospital funds to politically favored external organizations will not be recognized.

In closing, CarolinaEast takes its commitments to the people of Craven County and the greater Eastern North Carolina region very seriously. That is precisely why CarolinaEast has provided EMS services for decades on behalf of and at no cost to the County. It is also why CarolinaEast graciously agreed to contractually bind itself to that commitment for the next 20 years in the new lease agreement with the County. It is why CarolinaEast does not hesitate to provide tens of millions of dollars annually in charitable care to the community and why it deserves the hundreds of accolades it has received from numerous reporting organizations over the years. This commitment has motivated CarolinaEast to financially support a wide variety of worthwhile community organizations, and it will continue to do so to the best of its ability.

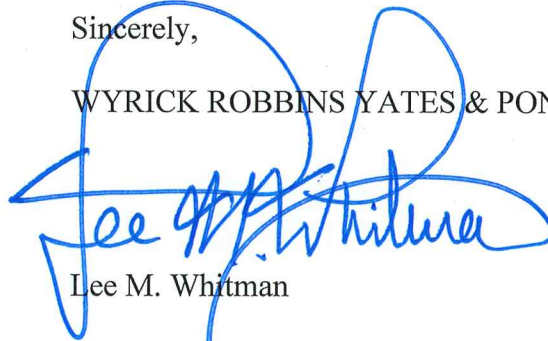
CarolinaEast looks forward to continuing its partnership with the County Board of Commissioners, but it will not tolerate unfounded allegations or misleading statements about its Board or its operations. It will also not convene a special Board session as called for by Mr. Jones or take any other action that may be perceived as acquiescing to an unlawful demand from the Craven County Board of Commissioners or otherwise unduly ceding power granted to CarolinaEast under the Hospital Authorities Act.

Arey W. Grady, III, Esq.
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Thank you for your attention to these matters. We trust this letter fully responds to the issues raised by Jason Jones at the November 18, 2024 meeting of the Craven County Board of Commissioners and CarolinaEast now considers the matter closed.

Sincerely,

WYRICK ROBBINS YATES & PONTON LLP

A handwritten signature in blue ink, appearing to read "Lee M. Whitman", is written over the typed name and firm name. The signature is stylized and loops around the text.

Lee M. Whitman

cc: Cynthia L. Turco, J.D., Vice President Legal Affairs
Dr. Keith Bennert, M.D., Chairman of the CarolinaEast Board of Directors

Enclosures: Exhibit A: Troy Smith email to Craven County Commissioners (May 8, 2021)
Exhibit B: CarolinaEast Awards and Accreditations, 2021 – Present
Exhibit C: Email from Arey Grady to CarolinaEast (May 17, 2022)
Exhibit D: CarolinaEast draft of lease (August 27, 2024)
Exhibit E: Craven County's proposed lease (September 17, 2024)