NOW COME Plaintiffs the University of North Carolina ("UNC") and East Carolina University ("ECU"), by and through their undersigned counsel, and for their Complaint against Defendants Pitt County Medical Center, Inc., d/b/a Vidant Medical Center ("Vidant") and Pitt County, North Carolina (the "County") allege and state as follows:

**INTRODUCTION**

1. Without the knowledge or consent of Plaintiffs, and without explanation for their reasons, Defendants have changed the governance structure of the Board of Trustees of Vidant (the "VMC Board") in violation of the longstanding affiliation agreement among the parties. The successful partnership between Vidant and ECU’s Brody School of Medicine has served an important public interest that benefits residents of the County, other counties in eastern North Carolina, and the State of North Carolina. When what is now the Brody School of Medicine was created, the state legislature began a decades-long series of investments of significant funds in Pitt County Memorial Hospital (now Vidant Medical Center) and in the partnership with the
Brody School of Medicine, funds that could have gone to building a new teaching hospital. Since that time, the appointment of the Board governing what is now Vidant has been shared between the County and UNC. ECU, with strong support from the UNC System, takes the stewardship responsibility regarding the Brody School of Medicine and its historic public mission with the utmost seriousness. Vidant’s unexpected elimination of the appointment powers vested in UNC, accomplished without consultation or explanation, jeopardizes the decades-long relationship which has served eastern North Carolina well since its inception in 1975. This breach of the parties’ agreement must be enjoined, and Defendants must be ordered to perform their obligations under the terms of the parties’ agreement such that all parties receive the benefit of their bargain, which was established for the benefit of the citizens of North Carolina.

**JURISDICTION AND VENUE**

2. UNC is a body politic and corporate that was established by and exists under N.C. Gen. Stat. § 116-3. The North Carolina House of Representatives and Senate each elect one-half of the members of UNC’s Board of Governors. UNC is headquartered in Orange County, North Carolina.

3. ECU is a public university and constituent institution of the UNC system. The main campus of ECU is in Pitt County, North Carolina.

4. Vidant is a non-profit corporation organized under chapter 55A of the North Carolina General Statutes and operates a full service, acute care hospital (the “Hospital”) in Pitt County, North Carolina. Since 2012, Pitt County Memorial Hospital, Inc. has done business as “Vidant Medical Center.” For purposes of this Verified Complaint, “Vidant” shall refer to Pitt County Memorial Hospital, Inc. both before and after 2012.
5. Pursuant to N.C. Gen. Stat. § 153A-11, the inhabitants of Pitt County are a body politic and corporate, and, pursuant to N.C. Gen. Stat. § 153A-12, the Pitt County Board of Commissioners exercises the powers, rights, duties, functions, privileges, and immunities of Pitt County (the "County").

6. UNC, ECU, Vidant, and the County are all parties to that certain "Affiliation Agreement between the Brody School of Medicine at East Carolina University and Pitt County Memorial Hospital dba Vidant Medical Center" entered into on or about August 8, 2013, that is the subject of this action (the "2013 Affiliation Agreement"), a true and correct copy of which is attached hereto as Exhibit A.

7. This Court has jurisdiction over the parties and subject matter of this lawsuit.

8. Venue is proper in Orange County, North Carolina.

**FACTUAL ALLEGATIONS**


10. On or about December 17, 1975, Vidant, the County, and UNC, for and on behalf of the School of Medicine of ECU (later renamed the Brody School of Medicine ("BSOM")), entered into an Affiliation Agreement (the "1975 Affiliation Agreement") pursuant to which the Hospital would serve as the primary teaching hospital of the ECU School of Medicine. A true and correct copy of the 1975 Affiliation Agreement is attached hereto as Exhibit B. Pursuant to the 1975 Affiliation Agreement, the parties acknowledged that the affiliation between the parties would "render unnecessary the construction and operation of a separate State-owned teaching hospital with attendant duplication of facilities and services," but agreed that "the construction
costs of additional beds and other facilities required by the teaching program and related expansions of the supportive service departments” were to be borne by ECU. The 1975 Affiliation Agreement would have expired in December 1995.

11. Under the 1975 Affiliation Agreement, the Board of Trustees of Vidant consisted of 35 members, 14 of whom were nominated by UNC and then appointed to the Board of Trustees of Vidant by the County.

12. Prior to the expiration of the 1975 Affiliation Agreement, on or about October 14, 1994, Vidant, the County, ECU, and UNC entered into a new Affiliation Agreement (the “1995 Affiliation Agreement”), effective January 1, 1995. A true and correct copy of the 1995 Affiliation Agreement is attached hereto as Exhibit C. The 1995 Affiliation Agreement again acknowledged that the continued utilization of the Hospital as the primary teaching hospital of the ECU School of Medicine would “render unnecessary the construction and operation of a separate State-owned teaching hospital with attendant duplication of facilities and services.”

13. Under the 1995 Affiliation Agreement, the Board of Trustees of Vidant consisted of 20 members appointed by the County. Eight of those members were nominated by UNC prior to appointment.

14. On June 1, 1998, the County and Vidant entered into that certain Agreement to Change Status of Pitt County Memorial Hospital (the “Transfer Agreement”) pursuant to which ownership of the Hospital was transferred to Vidant and the status of the Hospital was changed from a municipal hospital to a private not-for-profit hospital under N.C. Gen. Stat. § 131E-8.

15. Pursuant to Section 16 of the Transfer Agreement, Vidant was to “maintain its affiliation with the East Carolina University School of Medicine, according to the Affiliation
Agreement between the Medical School, the County and the Corporation. The Hospital shall continue to serve as the primary academic teaching Hospital of the University.”

16. Also pursuant to the Transfer Agreement, Vidant was to be governed by a 20-member board (what is now the VMC Board), with 11 members to be appointed by the County and nine members to be appointed by UNC.

17. The 1995 Affiliation Agreement was amended in 1998 to reflect the governance structure set forth in the Transfer Agreement. A true and correct copy of the Amendment to the 1995 Affiliation Agreement (the “Amendment”) is attached hereto as Exhibit D. All of the parties to the 1995 Affiliation Agreement executed the Amendment. As set forth in the Amendment, Vidant will be governed by a 20-member Board of Trustees. The County will appoint 11 or 55% of the governing body of the Corporation (at least one of whom shall be a Pitt County physician). The UNC Board of Governors will appoint the remaining 9 seats or 45% of the governing body of the Corporation. Of these 9, one member will be appointed from a slate of four persons nominated by a nominating committee composed only of trustees appointed by UNC Board of Governors.

18. On or about August 8, 2013, Plaintiffs and Defendants entered into the 2013 Affiliation Agreement, which extended the affiliation between BSOM and Vidant for another 20 years.

19. The 2013 Affiliation Agreement, like the 1975 Affiliation Agreement and the 1994 Affiliation Agreement, emphasized that the continued use of the Hospital as the primary teaching hospital of BSOM “render[s] unnecessary the construction and operation of a separate State-owned teaching hospital with attendant duplication of facilities and services.”

20. The parties to the 2013 Affiliation Agreement expressly acknowledged the mutual benefits of the affiliation and that such affiliation “will continue to most advantageously utilize
their combined facilities, professional staff and other resources to effect their common concern for excellence in community service, patient care, medical education and research for the residents of Pitt County, other counties in eastern North Carolina and the State of North Carolina."

21. Section III of the 2013 Affiliation Agreement also expressly provides for the same governance structure set forth in the Transfer Agreement and the 1998 Amendment:

VMC will be governed by a 20-member Board of Trustees. Pitt County, through its Board of Commissioners, will appoint 11, or 55%, of the governing body of VMC, at least one of whom shall be a Pitt County physician. The UNC Board of Governors will appoint the remaining 9 seats, or 45%, of the governing body of VMC. Of these 9, one member will be appointed from a slate of four persons nominated by a nominating committee composed only of trustees appointed by the UNC Board of Governors. Neither the County nor UNC Board of Governors shall remove any of their appointed Trustees except for cause.

22. Under the 2013 Affiliation Agreement, the VMC Board is to oversee the operations of the Hospital “so as to meet accreditation standards for [Vidant] and for BSOM’s educational programs.”

23. Representation by UNC’s appointees to the VMC Board has been an integral and essential component of the relationship and responsibilities of the parties dating back to the 1975 Affiliation Agreement as reaffirmed in 1994, 1998, and 2013. In each of the three affiliation agreements, the parties to the affiliation agreements expressly acknowledged that “the success of the combined program of medical training and patient care can only be achieved through faithful communication and sympathetic cooperation,” between the parties.

24. Plaintiffs are informed and believe, and therefore allege, that the General Assembly of North Carolina, relying in part upon the terms and obligations set forth in the 2013
Affiliation Agreement, has appropriated between $60 million and $65 million annually over the last five years to BSOM, which upon information and belief directly benefits the Hospital.

25. Moreover, relying on the contractual affiliation between Vidant and BSOM as set forth in the 2013 Affiliation Agreement (and the prior affiliation agreements), UNC and ECU have not invested in a separate State-owned teaching hospital for BSOM.

26. Plaintiffs are informed and believe, and therefore allege, that to build a separate State-owned teaching hospital for BSOM would cost in excess of $500 million.

27. Despite the express contractual provisions in the 2013 Affiliation Agreement regarding governance, on April 24, 2019, the VMC Board filed Articles of Amendment with the North Carolina Secretary of State pursuant to which the County is to continue to appoint 11 members to the VMC Board, but UNC is to have no appointments. Rather, the remaining nine members are to be appointed by members of the VMC Board.

28. The County acquiesced in the changes to the governance structure. As required by the Transfer Agreement and the VMC Articles of Incorporation, on April 22, 2019, consent to the changes proposed by the VMC Board was presented for approval to the County Commissions as an item on the “County Manager’s Reports.” With no debate, the Chairwoman asked for a motion to approve, and the vote was taken without discussion.

29. The County’s consent to amend the Articles of Incorporation amounts to a material breach of its contractual obligations under the 2013 Affiliation Agreement.

30. The change in appointments and governance—made without the knowledge or consent of or consultation with the Plaintiffs—constitutes a material breach of the 2013 Affiliation Agreement.
31. Denying UNC the contractual right to appoint nine members to the VMC Board and allowing the VMC Board to function in material violation of the 2013 Affiliation Agreement (i.e., without nine members appointed by UNC), could endanger the various accreditations of BSOM.

32. ECU and UNC have fully performed and are willing to continue to perform their obligations under the 2013 Affiliation Agreement assuming that Defendants comply with their obligations under the 2013 Affiliation Agreement.

33. By a letter dated May 6, 2019, a true and correct copy of which is attached hereto as Exhibit E, ECU and UNC requested a meeting with the Defendants to discuss their concerns regarding the unexpected change in appointments and governance of the VMC Board.

34. By a letter dated May 9, 2019, a true and correct copy of which is attached hereto as Exhibit F, ECU and UNC gave notice to Vidant and the County of the breach of the 2013 Affiliation Agreement. While the 2013 Affiliation Agreement provides for a reasonable opportunity to cure a breach, Vidant and the County have indicated an unwillingness to rectify the change in appointments and to reinstate the terms of governance set forth in the 2013 Affiliation Agreement and, therefore, have indicated an unwillingness to cure the breach.

35. On May 16, 2019, the representatives of Plaintiffs and Defendants met, pursuant to Plaintiffs’ request, to discuss the change in membership and governance of the VMC Board and the effect of that change upon the 2013 Affiliation Agreement. At that meeting, the parties were unable to resolve their controversy, and Defendants refused to assure Plaintiffs that they would not make changes to the composition of the VMC Board pursuant to the recent change in its Articles of Incorporation.
36. Plaintiffs are informed and believe, and therefore allege, that the next regularly scheduled meeting of the full VMC Board will be held in July 2019, although it is possible for the VMC Board to call a special meeting prior to July with notice of 48 hours or, in an emergency, even less notice.

FIRST CLAIM FOR RELIEF—DECLARATORY JUDGMENT

37. The allegations contained in Paragraphs 1 through 36 of the Complaint are realleged and incorporated herein by reference.

38. There now exists between Plaintiffs and Defendants an actual, real and justiciable controversy concerning the propriety of Defendants' actions to amend the Articles of Incorporation of Vidant and to change the governance structure of the VMC Board so as to eliminate any appointments to the VMC Board by UNC. Litigation concerning this controversy is unavoidable and inevitable.

39. Consequently, pursuant to N.C. Gen. Stat. § 1-253 et seq., N.C. R. Civ. P. 57, or other applicable law, Plaintiffs are entitled to a declaratory judgment that the 2013 Affiliation Agreement is valid and enforceable, including but not limited to the governance provisions in Section III, and that Defendants are bound pursuant to the terms of the 2013 Affiliation Agreement.

40. Defendants lack the authority to amend the governance provisions of the 2013 Affiliation Agreement without the consent of Plaintiffs. Therefore, pursuant to N.C. Gen. Stat. § 1-253 through 1-267 and Rule 57 of the North Carolina Rules of Civil Procedure, Plaintiffs are entitled to a judgment declaring the Amended Articles of Incorporation and purported new governance structure to be a material breach of the 2013 Affiliation Agreement and permanently
enjoining the elimination of the right for UNC to appoint nine members to the VMC Board without the consent of Plaintiffs.

**SECOND CLAIM FOR RELIEF—BREACH OF 2013 AFFILIATION AGREEMENT**

41. The allegations contained in Paragraphs 1 through 40 of the Complaint are realleged and incorporated herein by reference.

42. The 2013 Affiliation Agreement is a valid and enforceable agreement between the ECU, UNC, Vidant, and the County.

43. The terms of the specific provision of the 2013 Affiliation Agreement at issue—Section III, Governance—are definite, clear, and precise such that no party to the 2013 Affiliation Agreement could misunderstand the terms.

44. By changing the governance structure of the VMC Board from that required by the 2013 Affiliation Agreement to that as shown in the Articles of Amendment filed with the North Carolina Secretary of State on April 24, 2019, Vidant and the County have breached a material term of the 2013 Affiliation Agreement.

45. ECU and UNC have fully performed their obligations under the 2013 Affiliation Agreement.

46. Defendants’ breaches of the 2013 Affiliation Agreement are willful and material.

47. Defendants’ material breaches of the 2013 Affiliation Agreement have denied Plaintiffs the benefit of their bargain.

48. A breach of the 2013 Affiliation Agreement could negatively affect residents of the County, other counties in eastern North Carolina, and the State of North Carolina who are now served by BSOM and the Hospital pursuant to the 2013 Affiliation Agreement.
49. There is no adequate legal remedy for Defendants’ material breaches of the 2013 Affiliation Agreement such that Plaintiffs are entitled to specific performance of Section III of the 2013 Affiliation Agreement.

50. Alternatively, as a direct and proximate result of this material breach of the 2013 Affiliation Agreement, to the extent Plaintiffs must build a separate State-owned teaching hospital to ensure availability of appropriately-supervised and adequately-sized clinical learning space for BSOM students, Plaintiffs will incur damages in excess of $25,000.

THIRD CLAIM FOR RELIEF—BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

51. The allegations contained in Paragraphs 1 through 50 of the Complaint are realleged and incorporated herein by reference.

52. Implied in every North Carolina contract, including the 2013 Affiliation Agreement, is a covenant of good faith and fair dealing.

53. As more fully set forth above, Defendants have engaged in conduct that harms Plaintiffs and that breaches the duty of good faith and fair dealing implied in the 2013 Affiliation Agreement.

54. There is no adequate legal remedy for Defendants’ breaches of the covenants of good faith and fair dealing, and, therefore, Plaintiffs are entitled to specific performance of Section III of the 2013 Affiliation Agreement.

55. Alternatively, as a direct and proximate result of Defendants’ breaches of the covenants of good faith and fair dealing, to the extent Plaintiffs must build a separate State-owned teaching hospital to ensure availability of appropriately-supervised and adequately-sized clinical learning space for BSOM students, Plaintiffs will incur damages in excess of $25,000.
FOURTH CLAIM FOR RELIEF—INJUNCTIVE RELIEF

56. The allegations contained in Paragraphs 1 through 55 of the Complaint are realleged and incorporated herein by reference.

57. Plaintiffs are entitled to preliminary and permanent injunctions pursuant to Rule 65 of the North Carolina Rules of Civil Procedure to bar the new governance structure set forth in the Amended Articles of Incorporation from taking effect.

58. Without preliminary injunctive relief, the new governance structure, which is not authorized by the terms of the 2013 Affiliation Agreement, will remain in effect during the pendency of this litigation, preventing Plaintiffs from receiving the benefit of their bargain.

59. The new governance structure of the VMC Board threatens immediate and irreparable harm to Plaintiffs, which face the imminent loss of the amount of oversight of the Hospital that served as a basis for their bargain, and also leaves Plaintiffs with an agreement that does not accurately describe (for accreditors and others) BSOM's relationship with the facility serving as its primary teaching hospital.

60. As set forth above, Plaintiffs are likely to succeed on the merits of their claims.

61. The requested injunctive relief is necessary to protect Plaintiffs' rights during the course of this litigation.

62. Defendants will not suffer any injury as a result of the preliminary injunctive relief requested here. Defendants have been able to operate Vidant and the Hospital under the governance structure set forth in the 2013 Affiliation Agreement since 1998 (and, since 1975, under similar governance structures with significant representation by members either nominated by or appointed by UNC). Moreover, the next regularly scheduled meeting of the full VMC
Board is set for July 2019, and significant VMC Board business is unlikely to be conducted before such meeting.

63. The balance of the equities and the public interest strongly favor granting the injunctive relief sought by Plaintiffs.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Grant a temporary restraining order, a preliminary injunction, and a permanent injunction restraining the new governance structure set forth in the Amended Articles of Incorporation from taking effect;

2. Order specific performance of Section III of the 2013 Affiliation Agreement;

3. Alternatively, award Plaintiffs a judgment in an amount to be proven at trial for Defendants’ material breach of the 2013 Affiliation Agreement;

4. Enter a declaratory judgment that the 2013 Affiliation Agreement, including but not limited to the governance provisions in Section III, is valid and enforceable and that Defendants are bound pursuant to the terms of the 2013 Affiliation Agreement;

5. Award Plaintiffs their costs and expenses, including but not limited to attorneys’ fees, pursuant to applicable law;

6. Grant a trial by jury; and

7. Grant such other and further relief as the Court may deem just and proper.
This the 20th day of May, 2019.

NELSON MULLINS RILEY & SCARBOROUGH LLP

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ATTORNEYS FOR PLAINTIFFS

THE UNIVERSITY OF NORTH CAROLINA and EAST CAROLINA UNIVERSITY
VERIFICATION

William L. Roper, being first duly sworn, deposes and says that he is the Interim President of the University of North Carolina System (the "UNC System"); that he has read the Verified Complaint and is acquainted with all of the facts and circumstances stated therein; that the same are true of his own knowledge and his review of the official records of the UNC System, which are kept in the regular course of business and as a regular practice of the UNC System, except as to those matters and things stated and alleged upon information and belief, and as to those matters and things he believes them to be true.

This the 20th day of May, 2019.

William L. Roper

ORANGE COUNTY

STATE OF NORTH CAROLINA

Sworn to and subscribed before me this day by William L. Roper. I have personal knowledge of the identity of William L. Roper.

Date: May 20, 2019

Ruth Ann Brill
Notary Public Signature

Ruth Ann Brill
Notary Public Printed Name

My Commission expires: May 31, 2020

Official Seal
AFFILIATION AGREEMENT BETWEEN
THE BRODY SCHOOL OF MEDICINE AT EAST CAROLINA UNIVERSITY AND
PITT COUNTY MEMORIAL HOSPITAL dba VIDANT MEDICAL CENTER

WHEREAS the parties, on December 17, 1975, entered into an Affiliation Agreement which expired in December 1995; and

WHEREAS the parties, on October 14, 1994, agreed to amend the previous agreement and renew it with changes effective January 1, 1995; and

WHEREAS an Affiliation Agreement between the Brody School of Medicine at East Carolina University (BSOM) and Pitt County Memorial Hospital, dba Vidant Medical Center (VMC) will continue to provide for the utilization of VMC as the primary teaching hospital of BSOM, and will thereby render unnecessary the construction and operation of a separate State-owned teaching hospital with attendant duplication of facilities and services; and

WHEREAS VMC and BSOM each recognize that VMC benefits from an affiliation with BSOM through the enrichment of its medical education, research, and other related programs and the care of certain of its patients; and BSOM and VMC each recognize that East Carolina University and its BSOM benefit from an affiliation with VMC by having available for their faculty and medical students opportunities for clinical education, research, patient care, and other related activities afforded by VMC, its medical education programs, and facilities; and

WHEREAS the majority of the physicians on the VMC medical staff consists of physicians who have faculty appointments from BSOM and a majority of all VMC admissions are made by physicians who are faculty members; and

WHEREAS an Affiliation between BSOM and VMC will continue to most advantageously utilize their combined facilities, professional staff and other resources to effect their common concern for excellence in community service, patient care, medical education and research for the residents of Pitt County, other counties in eastern North Carolina and the State of North Carolina; and

WHEREAS the principles of a primary Affiliation of VMC and BSOM have in the past been jointly developed and approved by representatives of the parties involved; and

WHEREAS expanded facilities which may be necessitated by the Affiliation Agreement will permit continuation of the present VMC policy of providing for the hospital health care needs of Pitt County residents while expanding the availability of services to the regions to be served by VMC; and

WHEREAS it is the objective of VMC and BSOM that the Affiliation Agreement be so constructed as to comply with the standards and regulations of the reviewing and accrediting agencies involved; and
WHEREAS the parties to this agreement from time to time have entered or may in the future enter into leases, contracts and/or agreements outside this Affiliation Agreement which are consistent with the spirit of this agreement,

Now, therefore, this agreement is made and entered into this 8th day of August, 2013 by and between the Board of Trustees of VMC, the Board of Commissioners of Pitt County, the Board of Trustees of East Carolina University, and the Board of Governors of The University of North Carolina, as follows:

I. AREAS OF RESPONSIBILITY

A. The BSOM shall be operated as a reputable and accredited school of medicine as prescribed by the laws of the State of North Carolina and the requirements of the Liaison Committee on Medical Education (LCME) of the American Association of Medical Colleges and the American Medical Association. The Board of Governors of The University of North Carolina (UNC) shall retain for its facilities all jurisdictional powers incident to separate ownership. The operation of this Agreement as it affects BSOM shall be consistent with the policies of the Board of Trustees of East Carolina University (ECU) pursuant to the ECU Board's authority under the laws of North Carolina and the Code of UNC, and policies, regulations, and guidelines adopted by the Board of Governors of UNC or the President of UNC pursuant to their authority under the Constitution and laws of the State of North Carolina.

B. The VMC Board shall retain for its facilities all jurisdictional powers incident to separate ownership, including the powers to determine general and fiscal policies and to appoint its administrative officers and other personnel, under terms of subsequent paragraphs of this agreement. Teaching and research facilities which are provided by the VMC Board shall be fully integrated with the program of BSOM. The VMC Board is not to be understood as intending, and neither is it the intent of this Agreement, to obligate VMC to engage in any activities, research or otherwise, beyond those required for accreditation of VMC and BSOM, and neither is it the present intent of the VMC Board to undertake activities, research or otherwise, which are properly the responsibility of the BSOM.

C. The VMC Board retains final jurisdiction over the administration and the supervision of its facilities and over admission of patients and assignments of beds to them, consistent with the service purpose of VMC and the educational program of BSOM. The VMC Board shall seek counsel and advice from the Dean of BSOM when the exercise of such jurisdiction may affect the programs of teaching and research.

D. Educational programs and research projects conducted solely by and in BSOM shall remain the responsibility of BSOM.

E. BSOM and VMC shall communicate on any education, research or service
programs that serve the mission of both institutions, and may collaborate if the Dean of the BSOM and the President of VMC, or their respective delegates, agree to do so. Where applicable, a separate agreement will be formalized for such a program. Both institutions value the products of scientific investigation, including the creation of new knowledge applicable to the healthcare of patients, and will collaborate on such programs as agreed upon. Other programs of education, research and service within VMC shall remain the responsibility of the sponsoring institution. VMC and BSOM may from time to time jointly engage in, and apply their resources to support, collaborative healthcare delivery arrangements with each other outside this Affiliation Agreement which are consistent with the spirit of this agreement.

II. RIGHTS AND PRIVILEGES OF PHYSICIANS AND DENTISTS

A. The rights and privileges of all physicians and dentists on the VMC medical staff shall be maintained consistent with accreditation standards and requirements for VMC and BSOM and may not be withdrawn arbitrarily. The Board of Trustees of VMC shall maintain the authority to appoint the VMC medical staff and delineate privileges after consultation with the VMC medical staff.

B. The following terminology shall apply when various physician groups are referred to in this Affiliation Agreement:

(1) The Medical Staff: All physicians and dentists who have been admitted to VMC medical staff membership according to the VMC medical staff bylaws.
(2) Medical School Based Faculty: Members of the BSOM faculty who are employed or contracted by BSOM either full or part-time.
(3) Community-Based Faculty: Members of the medical staff who are not employed by BSOM, who practice in the community, and who have appointments to the BSOM faculty.

III. GOVERNANCE

A. The Board of Trustees of VMC (the VMC Board) shall provide oversight to VMC so as to meet accreditation standards for VMC and for BSOM’s educational programs.

B. VMC will be governed by a 20-member Board of Trustees. Pitt County, through its Board of Commissioners, will appoint 11, or 55%, of the governing body of VMC, at least one of whom shall be a Pitt County physician. The UNC Board of Governors will appoint the remaining 9 seats, or 45%, of the governing body of VMC. Of these 9, one member will be appointed from a slate of four persons nominated by a nominating committee composed only of trustees appointed by the UNC Board of Governors. Neither the County nor UNC Board of Governors shall remove any of their appointed Trustees except for
cause.

C. The Executive Committee of the VMC Board shall consist of nine members including the Chairman, Vice Chairman, Secretary, and six members elected by the VMC Board from the at large membership in a manner such that a total of five members of the Executive Committee are members of the VMC Board appointed by the County Commissioners and a total of four members of the Executive Committee are members of the VMC Board appointed by the Board of Governors of UNC.

D. For appointments by the Board of Governors of The University of North Carolina (UNC BOG), the Chancellor of East Carolina University and the Chief Executive Officer of Vidant Health, or their designees, will develop a slate of candidates for appointments and reappointments to present to the UNC BOG as a joint recommendation for appointment to the VMC Board. These recommendations will be based on agreed upon competencies of the candidates as needed for the proper knowledge, expertise and function of the VMC Board. The submission of recommendations to the UNC BOG will be in the form of a letter, with the letterhead consisting of the identity of each entity, jointly signed by the Chancellor and the Chief Executive Officer. In the event that agreement on candidates cannot be reached, separate letters may be sent by the respective parties, with proper notification of the intent to do so. This process does not apply to seat five, the seat appointed from a slate of four persons nominated by a nominating committee composed only of trustees appointed by the UNC Board of Governors, as described in III B above, as the process for appointment to this seat is established within the Agreement to Change Status of Pitt County Memorial Hospital entered into between the County and VMC dated June 1, 1998 (the "Transfer Agreement"), and may not be modified outside of that agreement.

IV. FINANCIAL RESPONSIBILITY

Expenses incurred for the operation of the facilities of VMC shall be paid by VMC. Expenses incurred for the operation of BSOM shall be paid by ECU. However, nothing in this paragraph shall prohibit subsequent agreements, subject to the legal powers and limitations of VMC and BSOM for the joint employment of personnel and for the pro rata apportionment of salaries thereof or for the pro rata apportionment of other related costs and expenditures. Such agreements will be agreed to by the Dean of BSOM and the President of VMC on these or other budgetary matters.

V. PATIENTS

Each patient admitted to a VMC service shall be available for teaching programs unless the attending physician or dentist, the patient, the guardian, or in the event of patient incapacity, the person authorized to consent to care specifies otherwise.
VI. MEDICAL SCHOOL-BASED FACULTY: APPOINTMENT, RECRUITMENT, PRIVILEGES

A. Appointment to the BSOM faculty shall be the responsibility of BSOM, subject to the policies and regulations of ECU and of the Board of Governors of UNC.

B. Each search committee for a chair of a clinical department at the School of Medicine shall include unrestricted representation from the VMC President or designee and Community-Based Faculty relevant to the department.

VII. CHIEF OF SERVICE

A. The chairperson of a clinical department in BSOM, or such other person as the Dean of BSOM may designate, and who is confirmed by the President of VMC, shall be appointed by the VMC Board as the Chief of the corresponding VMC hospital service. The Dean of BSOM and the President of VMC will define a process wherein the President will provide input on the annual evaluation of each Chief of Service based on performance criteria defined in a contractual agreement outlining the work of the Chief of Service. Recognition for outstanding performance or failure to fulfill the performance criteria as specified in the contract will be addressed through specific actions in the contract.

B. Each Chief of Service will be responsible for providing a mechanism for representation from all members of the service in developing patient care policies of the service.

VIII. MEDICAL STUDENT AND GRADUATE MEDICAL EDUCATION PROGRAMS

A. Medical student educational programs within VMC shall conform to the requirements of the Liaison Committee for Medical Education (LCME). The Chair of an academic clinical department shall be responsible for medical education programs within that department within VMC. Medical student participation in patient care shall be supervised by members of the Medical School-Based Faculty and Community-Based Faculty as agreed to by VMC and BSOM. The medical education programs of BSOM and VMC will assure that the learning environment promotes the development of explicit and appropriate professional attributes in its medical students and residents. BSOM and VMC mutually recognize that the learning environment includes both formal learning activities, and the attitudes, values and informal lessons conveyed by individuals who interact with the medical students and residents. When a medical student is exposed to an infectious, environmental, or other occupational hazard during the course of his/her clinical experience at VMC, initial evaluation and treatment will be provided by VMC's Occupational Health Office (and
Emergency Department for after hours needs), with follow-up care assured by BSOM's Office of Prospective Health. Initial evaluation and treatment costs will be borne by VMC.

B. VMC and BSOM accept the joint responsibility for developing and administering all residency and other graduate medical education (GME) programs accredited by the Accreditation Council for Graduate Medical Education (ACGME) or other national accrediting agencies, and unaccredited programs as jointly approved by the Dean of BSOM and the President of VMC. GME programs shall be conducted in accordance with the requirements of the accrediting body and the GME Committee. The Chair of an academic clinical department sponsoring any GME program shall maintain management responsibility for the conduct of these programs unless otherwise directed by the President of VMC and the Dean of BSOM acting jointly.

C. A Graduate Medical Education Committee shall have the responsibility for advising on and monitoring all aspects of residency education. This committee is responsible to the Executive Committee of the Medical Staff of VMC for all medical staff issues related to these trainees. In all other issues, the GME Committee is responsible to the Dean of BSOM and the President of VMC.

D. The President of VMC and the Dean of BSOM shall jointly appoint a BSOM faculty member to be the Director of GME in VMC and the Associate Dean for GME in BSOM. This person shall be the Designated Institutional Official for the ACGME and chair the GME Committee. The Dean of BSOM and the President of VMC will define a process wherein the President will provide input on the annual evaluation of the Director of GME/Associate Dean for GME based on performance criteria defined in a contractual agreement outlining the work of the Director of GME/Associate Dean for GME. Recognition for outstanding performance or failure to fulfill the performance criteria as specified in the contract will be addressed through specific actions in the contract.

IX. RESEARCH

A. BSOM and VMC shall encourage the development of research programs to advance medical knowledge, to support the undergraduate and graduate educational programs, and to contribute to the recruiting of an outstanding faculty.

B. All proposed research projects within VMC shall conform with federal, state, and other governmental regulations, and be approved by the appropriate VMC process.

X. EXPANSION OF TEACHING FACILITIES AND SERVICES
VMC and BSOM shall consult with the other regarding proposed expansion and/or renovation plans in order to provide adequate facilities and services for academic and clinical functions.

XI. JOINT POLICY COMMITTEE

A. In order to administer equitably the provisions of this Affiliation Agreement, there shall be established a Joint Policy Committee, hereinafter referred to as the "Committee". It shall consist of ten members:

1. The chair of the VMC Board of Trustees
2. The President of VMC
3. One appointed by the chair of the VMC Board of Trustees
4. One appointed by the Pitt County Commissioners
5. The Chief of the VMC Medical Staff
6. The Past Chief of the VMC Medical Staff
7. The Dean of BSOM
8. The Vice Chancellor for Administration and Finance of ECU
9. and 10. Two appointed by the Chancellor of ECU

The chairperson of the committee shall hold office for one year and be the Past Chief of the VMC Medical staff.

B. Its duties shall include:

1. Review of this Agreement, at least annually, to assess its operating effectiveness and to ascertain how, if at all, the Agreement may be improved to the satisfaction and mutual benefit of the parties involved.
2. Recommendation of amendments to this Agreement.
3. At the request of BSOM and VMC, review and make recommendations for solving problems related to the mutual programs of research, teaching, patient care and community services.
4. Consideration of such other matters which from time to time arise and which are of common concern to BSOM and VMC.
5. In the event that the Joint Policy Committee cannot resolve differences, the issue shall be referred for negotiation between the Vice Chancellor for Health Sciences of ECU and the Chief Executive Officer of Vidant Health, neither of whom shall be Committee members.

C. Appointments to the committee shall be for three year terms except those who serve by reason of the position they hold. Any member of the committee may be reappointed at the discretion of the party making the original appointment. A member may be removed only by the appointing party. In the event of removal, death, or resignation of a member, a successor shall be selected by the appointing party.
D. The Committee shall meet at anytime at the request of either BSOM or VMC. Such a request shall be submitted in writing to the Chairperson of the Committee. Notice of the time and place of the meeting shall be given at least ten days in advance. Said meeting shall be held within a reasonable time from the date the request is submitted or not more than thirty days.

E. In the event it is impossible for any member to be present at a meeting so called, the appointing party may designate an alternate to attend the meeting.

XII. TERMINATION OR AMENDMENT OF THE AGREEMENT

A. The parties of this Affiliation Agreement acknowledge that the success of the combined program of medical training and patient care can only be achieved through faithful communication and sympathetic cooperation between the Dean of BSOM and its faculty and the President of VMC and its medical staff, and the Board of Trustees of VMC, the Board of Commissioners of Pitt County, the Board of Trustees of ECU, and the Board of Governors of UNC.

B. This Agreement shall extend for a period of twenty years from its effective date (the "Initial Term"). It may be terminated prior to the conclusion of the twenty year period only upon mutual consent of BSOM and VMC. In such an instance, a period of four years shall be allowed to effect the termination unless a shorter period is established by mutual consent of BSOM and VMC.

C. It is understood that this Agreement may be amended in writing at any time to include such provisions as are agreed upon by the parties. Future provisions in this document required for accreditation purposes by either VMC or BSOM should be addressed by addendum to this agreement or other contractual mechanisms rather than through termination and renegotiation of this agreement.

D. In the event BSOM or VMC 1) declares bankruptcy, 2) fails to comply with any Federal or State law that materially impairs its ability to perform its obligations under the Agreement or that materially and adversely affects the operation or regulatory compliance of another party after being notified in writing of a failure to comply, 3) loses any North Carolina, federal, or accreditation agency license or permit that materially impairs its ability to perform its obligations under the Agreement or that materially and adversely affects the operation or regulatory compliance of the other party, or 4) is excluded from participation in Government Programs, then this Agreement may be terminated immediately by written notice of termination given by the other party (BSOM or VMC). Notwithstanding the foregoing, the party receiving notice of termination shall be allowed 30 days or such other
time period as agreed upon by BSOM and VMC to cure the deficiency.

E. If BSOM or VMC shall be guilty of a material breach of this Agreement other than any of those identified specifically above as a basis for immediate termination, then the non-breaching party may cancel the Agreement at its option after written notice of the basis for termination and a reasonable opportunity to cure the breach, which shall be no less than one year.

F. BSOM or VMC shall have the right to terminate this Agreement in the event that the other party merges with a third party and is not the surviving party of such merger or otherwise undergoes a change of control (i.e., a material change in fundamental purposes; a new appointing authority for members of its board of trustees or directors; or a change in majority of the persons on its board of trustees or directors other than in the ordinary course of business pursuant to the bylaws in effect as of the effective date of this Agreement). BSOM and VMC agree to provide written notice to the other no later than one year prior to the effective date of any such event if any of these specified events is planned or reasonably foreseeable, and the other party shall, within sixty (60) days of receipt of such notice, notify the other party in writing as to whether or not it elects to exercise its rights under this section.

G. It is further agreed that this Agreement, as it may be amended from time to time, shall be renewed for an additional period of twenty years beyond the Initial Term unless VMC or BSOM provides written notice to the other of intent not to renew at least one year prior to expiration of the Initial Term. In the event that BSOM or VMC provides such timely notice of intent not to renew, the Agreement shall be extended for two years beyond the Initial Term to allow for an orderly wind-up of the relationship of the parties. In the event of termination for any reason or non-renewal of this Agreement, the parties agree to cooperate in good faith in the wind-up of the activities that are the subject of this Agreement, including but not limited to the wind-up of student clinical education or training insofar as feasible. VMC and BSOM shall conduct the wind-up in a manner minimally disruptive to the parties' programs and personnel and in compliance with accreditation requirements.

In witness whereof, each party has caused a duly authorized representative to execute this Agreement to be effective as of the date indicated hereinabove, which is the date of the last signature of a party's representative affixed below.
BOARD OF GOVERNORS OF
THE UNIVERSITY OF NORTH CAROLINA

BY: Peter D. Hans
Chairman

ATTEST:
Bart Corrucci
Secretary

BOARD OF TRUSTEES OF
PITT COUNTY MEMORIAL HOSPITAL

BY: Walter E. Nash
Chairman

ATTEST:
Bruce E. Hay
 Secretary

PITT COUNTY BOARD OF COMMISSIONERS

BY: Jimmy Barro
Chairman

ATTEST:
Kimberly W. Hines
Secretary

BOARD OF TRUSTEES OF
EAST CAROLINA UNIVERSITY

BY: John J.索尼
Chairman

ATTEST:
Colleen A. Arnspiger
Secretary
WHEREAS an Affiliation Agreement between the East Carolina University School of Medicine and the Pitt County Memorial Hospital will provide for the utilization of the Pitt County Memorial Hospital as the primary teaching hospital of the School of Medicine, and will thereby render unnecessary the construction and operation of a separateState-owned teaching hospital with attendant duplication of facilities and services; and

WHEREAS an Affiliation between the School of Medicine of East Carolina University and the Pitt County Memorial Hospital will most advantageously utilize their combined facilities, professional staff and other resources to effect their common concern for excellence in community service, patient care, medical education and research for the residents of Pitt County, other counties in eastern North Carolina and the State of North Carolina; and

WHEREAS the principles of a primary Affiliation of the two parties have been jointly developed and approved by representatives of the parties involved; and

WHEREAS expanded facilities which may be necessitated by the Affiliation Agreement will permit continuation of the present HOSPITAL policy of providing for the hospital health care needs of Pitt County residents while expanding the availability of services to the regions to be served by the HOSPITAL; and

WHEREAS it is the objective of both parties that the Affiliation Agreement be so constructed as to comply with the standards and regulations of the reviewing and accrediting agencies involved.

Now, therefore, this agreement is made and entered into this __ day of ___, 1975, by and between the Board of Trustees of the Pitt County Memorial Hospital, hereinafter sometimes called "Hospital Board", and the Board of Commissioners of Pitt County, and the Board of Governors of The University of North Carolina for and on behalf of the School of Medicine of East Carolina University, a constituent institution of The University of North Carolina.
I. AREAS OF RESPONSIBILITY

A. The East Carolina University School of Medicine shall be operated as a reputable and accredited school of medicine as prescribed by the laws of the State of North Carolina and the requirements of the Liaison Committee on Medical Education (LCME) of the American Association of Medical Colleges and the American Medical Association. The Board of Governors of The University of North Carolina shall retain for its facilities all jurisdictional powers incident to separate ownership. The operation of this agreement as it affects the School of Medicine shall be consistent with the policies of the Board of Trustees of East Carolina University pursuant to the Board's authority under the laws of North Carolina and with the Code of The University of North Carolina and policies and regulations adopted by the Board of Governors of The University of North Carolina pursuant to its authority under the Constitution and laws of the State of North Carolina.

B. The Hospital Board shall retain for its facilities all jurisdictional powers incident to separate ownership, including the powers to determine general and fiscal policies and to appoint its administrative officers and other personnel, under terms of subsequent paragraphs of this agreement. Teaching and research facilities which are provided by the Hospital Board shall be fully integrated with the program of the School of Medicine. The
Hospital Board is not to be understood as intending, and neither is it the intent of this agreement, to obligate the HOSPITAL to engage in any activities, research or otherwise, beyond those required for accreditation of the HOSPITAL and this School of Medicine, and neither is it the present intent of the Hospital Board to undertake activities, research or otherwise, which are properly the responsibility of the School of Medicine.

C. The Hospital Board retains final jurisdiction over the administration and the supervision of its facilities and over admission of patients and the assignments of beds to them, consistent with the service purpose of the HOSPITAL and the educational program of the School of Medicine. The Board shall seek counsel and advice from the Dean of the School of Medicine when the exercise of such jurisdiction affects the programs of teaching and research.

D. Medical educational programs and research projects, conducted by and in the School of Medicine and expressed through the Dean, shall remain the responsibility of the School of Medicine.

E. Other programs of education, research and service at the HOSPITAL shall remain the responsibility of the sponsoring institution. This does not preclude the development of a joint responsibility for such programs pursuant to agreement between the affiliated institutions when such a cooperative effort is desirable.

II. RIGHTS AND PRIVILEGES OF PHYSICIANS

The rights and privileges of all physicians on the Hospital medical staff, faculty and non-faculty, shall be maintained
consistent with accreditation standards and requirements for the HOSPITAL and the School of Medicine. Nothing in this Affiliation Agreement shall alter the existing open medical staff policy of the HOSPITAL and the authority of the Board of Trustees of the HOSPITAL to appoint the medical staff and delineate privileges for its members upon the recommendation of the staff. The open medical staff policy shall exist and continue as long as this Affiliation Agreement shall exist between the parties.

III. ADMINISTRATION

A. The Board of Trustees of the HOSPITAL shall administer the HOSPITAL so as to meet accreditation standards for the HOSPITAL and for the School of Medicine's educational programs.

B. The Board of Trustees of the HOSPITAL shall consist of thirty-five (35) members. The Board of Governors of The University of North Carolina shall nominate fourteen (14) members, or 40 percent, of the Board of Trustees of the HOSPITAL, and the Board of Commissioners of Pitt County shall appoint the fourteen (14) members so nominated by the Board of Governors.

C. The Executive Committee of the Board of Trustees of the HOSPITAL shall consist of the Chairman, Vice Chairman, Secretary, and four (4) additional members elected by the Board of Trustees of the HOSPITAL from its membership for stated terms. At least three (3) members of the Executive Committee shall be chosen from persons who have been named as Trustees by the Board of Governors.
D. The Board of Trustees of the HOSPITAL and the Board of Commissioners of Pitt County shall provide for such amendments of the Certificate of Incorporation of the HOSPITAL, and the Board of Trustees of the HOSPITAL shall provide for such amendments of the By-Laws of the HOSPITAL and of the Medical Staff By-Laws, as are required by this section III.

IV. FINANCIAL RESPONSIBILITY

A. All expenses incurred for the operation of the facilities of the HOSPITAL shall be paid by the Hospital Board, and all expenses incurred for the operation of the School of Medicine shall be paid by East Carolina University. However, nothing in this paragraph shall prohibit subsequent agreements, subject to the legal powers and limitations of the parties, for the joint employment of personnel and for the pro rata apportionment of salaries thereof or for the pro rata apportionment of other related costs and expenditures. In the event agreement cannot be reached by the Dean of the School of Medicine and the Director of the HOSPITAL on these or other budgetary matters, the Chancellor shall submit his recommendations to the President, and the issue shall be referred for negotiation between the parties through such procedures as the Hospital Board and the Board of Governors shall establish.

B. The HOSPITAL shall be responsible for that portion of the salaries of house staff related to their direct care of patients for which reimbursement is available from other
sources. That portion of the salary of house staff unrelated to the direct care of patients shall be the responsibility of the School of Medicine. Prior annual agreement regarding the proportion of effort to be rendered by the house staff both in activities related and unrelated to direct patient care services shall be determined by the Dean of the School of Medicine and the Director of the HOSPITAL.

V. PATIENTS

Each patient admitted to a hospital service shall be available for teaching programs, unless the attending physician specifies otherwise.

VI. CLINICAL FACULTY: APPOINTMENT, RECRUITMENT, PRIVILEGES

A. Appointment to the faculty shall be the responsibility of the School of Medicine, subject to the policies and regulations of East Carolina University and of the Board of Governors of The University of North Carolina.

B. The medical staff through participation of the non-full-time clinical faculty of the HOSPITAL shall have a one-third representation on search committees created to advise the Dean of the School of Medicine in the appointment of chairpersons of clinical departments.

C. The Dean of the School of Medicine shall assure the participation of non-full-time clinical faculty medical staff members of the HOSPITAL in the recruitment and selection of clinical faculty members of the School of Medicine.

D. All clinical faculty members shall have hospital privileges subject to the By-Laws of the HOSPITAL.
VII. CHIEF OF SERVICE

A. The chairperson of a clinical department in the School of Medicine, or such other person from that department as the Dean of the School of Medicine may designate, shall be appointed by the Hospital Board as the Chief of the corresponding hospital service. The effectiveness and performance of the Chief of Service shall be subject to periodic review by the Board of Trustees of the HOSPITAL and by the Dean of the School of Medicine.

B. A Service Advisory Committee shall be formed by each Chief of Service, and shall be composed of equal representation from the full-time clinical faculty and from other members of the Hospital staff, the latter members to be selected by the staff of the service.

VIII. MEDICAL STUDENT AND HOUSE STAFF EDUCATIONAL PROGRAMS

A. Residency programs shall be established, according to accreditation requirements of the Liaison Committee for Medical Education (LCME), Residency Review Committees (RRC) and Liaison Committee for Graduate Medical Education (LCGME), in the major disciplines of Family Practice, Medicine, Pediatrics, Obstetrics-Gynecology, Psychiatry, Surgery and in other specialties and sub-specialties. These programs shall be initiated by the concerned clinical service with the approval of the Dean of the School of Medicine and the Board of Trustees of the HOSPITAL. The establishment of residency programs shall be based upon medical manpower needs and School of Medicine and Hospital accreditation requirements.
B. The chairperson of a clinical department shall be responsible for undergraduate and house staff educational programs in that department.

C. Medical students and house staff shall be responsibly involved in patient care under the supervision of the Dean and the faculty of the School of Medicine.

IX. RESEARCH

A. The School of Medicine shall encourage the development of research programs to advance medical knowledge, to support the undergraduate and graduate educational programs, and to contribute to the recruiting of an outstanding faculty.

B. All proposed research projects within the HOSPITAL shall be in conformity with federal, state, and other governmental regulations, and shall be done under faculty supervision.

X. EXPANSION OF TEACHING FACILITIES AND SERVICE DEPARTMENTS

The construction costs of additional beds and other facilities required by the teaching program and related expansions of the supportive service departments shall be borne by East Carolina University. The extent of duplication of hospital-based services related to any such expansion shall be determined by agreement of the Director of the HOSPITAL and the Dean of the School of Medicine. In the event that they are not able to reach agreement, the Chancellor shall submit his recommendations to the President; and the issue shall be referred for negotiation between the parties through such procedures as the Hospital Board and the Board of Governors shall establish.
XI. JOINT POLICY COMMITTEE

In order to administer equitably the provisions of this Affiliation, there shall be established a Joint Policy Committee, hereinafter referred to as the "COMMITTEE". It shall consist of ten (10) members including the Dean of the School of Medicine of East Carolina University, the Vice Chancellor for Business Affairs of East Carolina University, the Vice Chancellor for Health Affairs of East Carolina University, and two (2) members appointed by the Chancellor of East Carolina University; and five (5) to be appointed by the Board of Trustees of the HOSPITAL, one (1) of whom shall be the Chief of the Medical Staff or his designee and two (2) of whom shall be members of the medical staff who are not full-time medical school faculty.

Its duties shall include:

A. Review of this Agreement, at least annually, to assess its operating effectiveness and to ascertain how, if at all, the Agreement may be improved to the satisfaction and mutual benefit of the parties involved.

B. Recommendation of amendments to this Agreement.

C. Development of common guidelines and programs consistent with the policies of both parties and the provisions of this Agreement.

D. Review and make recommendations for solving problems related to the mutual programs of research, teaching, patient care and community services.
E. Consideration of such other matters which from time to time arise and which are of common concern to both parties.

F. In the event that the Joint Policy Committee cannot resolve differences at the local level, the issue shall be referred for negotiation between the Hospital Board and the Board of Governors.

Appointments to the COMMITTEE shall be for three (3) year staggered terms. Any member of the COMMITTEE may be re-appointed at the discretion of the party making the original appointment. A member may be removed only by the appointing party. In the event of removal, death, or resignation of a member, a successor shall be selected by the appointing party.

The COMMITTEE shall meet at any time at the request of either the School of Medicine or the HOSPITAL. Such a request shall be submitted in writing to the Chairperson of the COMMITTEE. Notice of the time and place of the meeting shall be given at least ten (10) days in advance. Said meeting shall be held within forty (40) days from the date the request is submitted.

In the event it is impossible for any member to be present at a meeting so called, the appointing party may designate an alternate to attend the meeting.

The Chairperson of the COMMITTEE shall be elected annually, alternating between representatives of the HOSPITAL and the School of Medicine.

XII. TERMINATION OR AMENDMENT OF THE AGREEMENT

The parties of this Agreement of Affiliation acknowledge that the success of the combined program of medical training
and patient care can only be achieved through faithful communication and sympathetic cooperation between the Dean of the School of Medicine and the Director of the HOSPITAL, between the full-time and adjunct faculties and medical staff and the Board of Trustees of the HOSPITAL, the Commissioners of Pitt County, the Board of Trustees of East Carolina University and the Board of Governors of The University of North Carolina.

This Agreement shall extend for a period of twenty (20) years from its date of execution. It may be terminated prior to the conclusion of the twenty (20) year period only upon mutual consent of the parties. In such an instance, a period of four (4) years shall be allowed to effect the termination.

It is understood that this Agreement may be amended in writing at any time to include such provisions as are agreed upon by the parties.

If any party to this Agreement shall be guilty of a material breach of this Agreement, any of the other parties may cancel the Agreement at its option.

It is further agreed that by mutual consent this Agreement, together with any changes agreed upon, may be renewed for an additional period of twenty (20) years upon notice by any party in writing at least one (1) year prior to the expiration of the initial twenty (20) year period.
The Board of Trustees of
Pitt County Memorial Hospital

by
Chairman of the Board
12-16-75

The Board of Governors of
The University of North Carolina

by
Chairman
December 16, 1975

by
Chairman, Pitt County
Board of Commissioners
12-17-75

Secretary
12-14-75
AFFILIATION AGREEMENT BETWEEN
THE EAST CAROLINA UNIVERSITY SCHOOL OF MEDICINE
AND THE PITT COUNTY MEMORIAL HOSPITAL

WHEREAS the parties, on December 17, 1975, entered into an Affiliation Agreement which expires in December 1995; and

WHEREAS an Affiliation Agreement between the East Carolina University-School of Medicine and the Pitt County Memorial Hospital will continue to provide for the utilization of the Pitt County Memorial Hospital as the primary teaching hospital of the School of Medicine, and will thereby render unnecessary the construction and operation of a separate State-owned teaching hospital with attendant duplication of facilities and services; and

WHEREAS an Affiliation between the School of Medicine of East Carolina University and the Pitt County Memorial Hospital will continue to most advantageously utilize their combined facilities, professional staff and other resources to effect their common concern for excellence in community service, patient care, medical education and research for the residents of Pitt County, other counties in eastern North Carolina and the State of North Carolina; and

WHEREAS the principles of a primary Affiliation of the two parties have in the past been jointly developed and approved by representatives of the parties involved; and

WHEREAS expanded facilities which may be necessitated by the Affiliation Agreement will permit continuation of the present Hospital policy of providing for the hospital health care needs of Pitt County residents while expanding the availability of services to the regions to be served by the Hospital; and

WHEREAS it is the objective of both parties that the Affiliation Agreement be so constructed as to comply with the standards and regulations of the reviewing and accrediting agencies involved; and

WHEREAS the parties to this agreement from time to time have entered or may in the future enter into leases, contracts and/or agreements outside this Affiliation Agreement which do not violate the spirit of this agreement; and

WHEREAS the parties, by mutual agreement, hereby waive a four (4) year notice to terminate the existing Affiliation Agreement and agree to terminate same on 31 December, 1994, and make this Affiliation Agreement effective 1 January, 1995.

Now, therefore, this agreement is made and entered into this 14th day of October, 1994, by and between the Board of Trustees of Pitt County Memorial Hospital, Incorporated, the Board of Commissioners of Pitt County, the Board of Trustees of East Carolina University, and the Board of Governors of the University of North Carolina, as follows:
I. AREAS OF RESPONSIBILITY
A. The East Carolina University School of Medicine shall be operated as a reputable and accredited school of medicine as prescribed by the laws of the State of North Carolina and the requirements of the Liaison Committee on Medical Education (LCME) of the American Association of Medical Colleges and the American Medical Association. The Board of Governors of the University of North Carolina shall retain for its facilities all jurisdictional powers incident to separate ownership. The operation of this Agreement as it affects the School of Medicine shall be consistent with the policies of the Board of Trustees of East Carolina University pursuant to the Board's authority under the laws of North Carolina and the Code of the University of North Carolina and policies and regulations adopted by the Board of Governors of The University of North Carolina pursuant to its authority under the Constitution and laws of the State of North Carolina.
B. The Hospital Board shall retain for its facilities all jurisdictional powers incident to separate ownership, including the powers to determine general and fiscal policies and to appoint its administrative officers and other personnel, under terms of subsequent paragraphs of this agreement. Teaching and research facilities which are provided by the Hospital Board shall be fully integrated with the program of the School of Medicine. The Hospital Board is not to be understood as intending, and neither is it the intent of this Agreement, to oblige the Hospital to engage in any activities, research or otherwise, beyond those required for accreditation of the Hospital and this School of Medicine, and neither is it the present intent of the Hospital Board to undertake activities, research or otherwise, which are properly the responsibility of the School of Medicine.
C. The Hospital Board retains final jurisdiction over the administration and the supervision of its facilities and over admission of patients and assignments of beds to them, consistent with the service purpose of the Hospital and the educational program of the School of Medicine. The Board shall seek counsel and advice from the Dean of the School of Medicine when the exercise of such jurisdiction affects the programs of teaching and research.
D. Medical educational programs and research projects, conducted by and in the School of Medicine shall remain the responsibility of the School of Medicine.
E. Other programs of education, research and service at the Hospital shall remain the responsibility of the sponsoring institution. This does not preclude the development of a joint responsibility for such programs pursuant to agreement between the affiliated institutions when such a cooperative effort is desirable, such agreement to be executed by the Dean of the School of Medicine and the President of the Hospital or their respective delegates.

II. RIGHTS AND PRIVILEGES OF PHYSICIANS AND DENTISTS
A. The rights and privileges of all physicians and dentists on the Hospital medical staff shall be maintained consistent with accreditation standards and requirements for the Hospital and the School of Medicine and may not be withdrawn arbitrarily. The Board of Trustees of the Hospital shall maintain the
authority to appoint the medical staff and delineate privileges after consultation with the medical staff.

B. The following terminology shall apply when various physician groups are referred to in this Affiliation Agreement:
   (1) The Medical Staff: All physicians and dentists having clinical privileges at PCMH.
   (2) Medical School-Based Faculty: Members of the medical staff who are employed solely by the medical school either full or part-time.
   (3) Community-Based Clinical Faculty: Members of the medical staff who are not employed by the medical school, practice in the community and have clinical appointments to the medical school faculty.
   (4) Community Physicians: Members of the medical staff who do not have clinical appointments to the medical school faculty.

III. ADMINISTRATION
   A. The Board of Trustees of the Hospital shall administer the Hospital so as to meet accreditation standards for the Hospital and for the School of Medicine’s educational programs.
   B. The Board of Trustees of the Hospital is appointed by the Pitt County Board of Commissioners and shall consist of twenty (20) members, eight (8) of whom are nominated by the Board of Governors of the University of North Carolina.
   C. The Executive Committee of the Board of Trustees of the Hospital shall consist of seven (7) members: the Chairman, Vice Chairman, Secretary, and four (4) additional members elected by the Board of Trustees of the Hospital from its membership for stated terms. Three (3) members of the Executive Committee shall be chosen from persons who have been named as Trustees by the Board of Governors; four (4) members of the Executive Committee shall be chosen from persons who have been named as trustees by the Pitt County Board of Commissioners.

IV. FINANCIAL RESPONSIBILITY
   Expenses incurred for the operation of the facilities of the Hospital shall be paid by the Hospital. Expenses incurred for the operation of the School of Medicine shall be paid by East Carolina University. However, nothing in this paragraph shall prohibit subsequent agreements, subject to the legal powers and limitations of the parties, for the joint employment of personnel and for the pro rata apportionment of salaries thereof or for the pro rata apportionment of other related costs and expenditures. Such agreements will be agreed to by the Dean of the School of Medicine and the President of the Hospital on these or other budgetary matters.

V. PATIENTS
   Each patient admitted to a hospital service shall be available for teaching programs, unless the patient, attending physician or dentist specifies otherwise.
VI. MEDICAL SCHOOL-BASED FACULTY: APPOINTMENT, RECRUITMENT, PRIVILEGES
A. Appointment to the faculty shall be the responsibility of the School of Medicine, subject to the policies and regulations of East Carolina University and of the Board of Governors of The University of North Carolina.
B. The community-based clinical faculty shall have a one-third representation on search committees created to advise the Dean of the School of Medicine in the appointment of chairpersons of clinical departments.
C. The Dean of the School of Medicine shall assure the participation of community-based clinical faculty in the recruitment and selection of medical school-based faculty.

VII. CHIEF OF SERVICE
A. The chairperson of a clinical department in the School of Medicine, or such other person from that department as the Dean of the School of Medicine may designate, shall be appointed by the Hospital Board as the Chief of the corresponding hospital service. The effectiveness and performance of the Chief of Service shall be subject to periodic review by the Board of Trustees of the Hospital and by the Dean of the School of Medicine. In the event disciplinary action or removal as Chief is called for by one party and not concurred in by the other, the matter will be referred to the Joint Policy Committee.
B. Each Chief of Service will be responsible for providing a mechanism for representation from all members of the service in developing patient care policies of the service.

VIII. MEDICAL STUDENT AND HOUSE STAFF EDUCATIONAL PROGRAMS
A. Medical student educational programs within the Hospital shall conform to the requirements of the Liaison Committee for Medical Education (LCME). The Chairman of an academic clinical department shall be responsible for medical education programs within that department. Medical student participation in patient care shall be supervised by members of the medical school-based faculty and community-based clinical faculty as agreed to by the Hospital and the medical school.
B. Pitt County Memorial Hospital and East Carolina University School of Medicine accept the joint responsibility for developing and administering all residency and other graduate medical education programs accredited by the Accreditation Council for Graduate Medical Education (ACGME). These programs shall be conducted in accordance with the institutional and special requirements of the ACGME. The Chief of each clinical service sponsoring an accredited graduate medical education program shall maintain oversight responsibility for the conduct of these programs.
C. A Graduate Medical Education Committee shall have the responsibility for advising on and monitoring all aspects of residency education. The chair of this committee shall be appointed jointly by the Dean of the School of Medicine and the President of Pitt County Memorial Hospital. This committee is responsible to the Executive Committee of the Medical Staff of Pitt County Memorial Hospital for all medical staff issues related to these trainees. In all other issues, the
Graduate Medical Education Committee is responsible to the Dean of the School of Medicine and the President of Pitt County Memorial Hospital through a Graduate Medical Education Policy Committee.

IX. RESEARCH
A. The School of Medicine and Hospital shall encourage the development of research programs to advance medical knowledge, to support the undergraduate and graduate educational programs, and to contribute to the recruiting of an outstanding faculty.
B. All proposed research projects within the Hospital shall conform with federal, state, and other governmental regulations, and be approved by the appropriate Hospital committees.

X. EXPANSION OF TEACHING FACILITIES AND SERVICE DEPARTMENTS
The Hospital and the School of Medicine shall consult with the other regarding proposed expansion and/or renovation plans and when such expansion and/or renovation involves Hospital property, with the Executive Committee of the Medical Staff.

XI. JOINT POLICY COMMITTEE
   In order to administer equitably the provisions of this Affiliation Agreement, there shall be established a Joint Policy Committee, hereinafter referred to as the "COMMITTEE." It shall consist of ten (10) members; one (1) of whom shall be a representative appointed by the Pitt County Board of Commissioners, one (1) of whom shall be the Dean of the School of Medicine of East Carolina University, one (1) of whom shall be the Vice Chancellor for Business Affairs of East Carolina University, one (1) of whom shall be the Chief of the Hospital medical staff, one (1) of whom shall be the Past Chief of the Hospital medical staff, one (1) of whom shall be the President of the Hospital, and one (1) of whom shall be the Chairman of the Hospital Board of Trustees, and two (2) appointed by the Chancellor of East Carolina University and one (1) appointed by the Chairman of the Board of Trustees of the Hospital. The chairperson of the committee shall hold office for one (1) year and be the Past Chief of the Medical Staff.

   Its duties shall include:
   A. Review of this Agreement, at least annually, to assess its operating effectiveness and to ascertain how, if at all, the Agreement may be improved to the satisfaction and mutual benefit of the parties involved.
   B. Recommendation of amendments to this Agreement.
   C. Development of common guidelines and programs consistent with the policies of both parties and the provisions of this Agreement.
   D. Review and make recommendations for solving problems related to the mutual programs of research, teaching, patient care and community services.
E. Consideration of such other matters which from time to time arise and which are of common concern to both parties.

F. In the event that the Joint Policy Committee cannot resolve differences at the local level, the issue shall be referred for negotiation between the Hospital Board and the Board of Governors.

Appointments to the Committee shall be for three (3) year terms except those who serve by reason of the position they hold. Any member of the Committee may be reappointed at the discretion of the party making the original appointment. A member may be removed only by the appointing party. In the event of removal, death, or resignation of a member, a successor shall be selected by the appointing party.

The Committee shall meet at any time at the request of either the University or the Hospital. Such a request shall be submitted in writing to the Chairperson of the Committee. Notice of the time and place of the meeting shall be given at least ten (10) days in advance. Said meeting shall be held within a reasonable time from the date the request is submitted or not more than thirty (30) days.

In the event it is impossible for any member to be present at a meeting so called, the appointing party may designate an alternate to attend the meeting.

XII. TERMINATION OR AMENDMENT OF THE AGREEMENT

The parties of this Affiliation Agreement acknowledge that the success of the combined program of medical training and patient care can only be achieved through faithful communication and sympathetic cooperation between the Dean of the School of Medicine and its faculty, and the President of the Hospital and its medical staff, and the Board of Trustees of the Hospital, the Board of Commissioners of Pitt County, the Board of Trustees of East Carolina University, and the Board of Governors of the University of North Carolina.

This Agreement shall extend for a period of twenty (20) years from its effective date. It may be terminated prior to the conclusion of the twenty (20) year period only upon mutual consent of the parties. In such an instance, a period of four (4) years shall be allowed to effect the termination.

It is understood that this Agreement may be amended in writing at any time to include such provisions as are agreed upon by the parties.

If any party to this Agreement shall be guilty of a material breach of this Agreement, any of the other parties may cancel the Agreement at its option.

It is further agreed that by mutual consent this Agreement, together with any changes agreed upon, may be renewed for an additional period of twenty (20) years upon notice by any party in writing at least one (1) year prior to its expiration.
Amendment to the Affiliation Agreement Between
The East Carolina University School of Medicine
and the Pitt County Memorial Hospital

Section III. B is hereby amended to read as follows:

III. B: Pitt County Memorial Hospital, Inc. will be governed by a 20-member Board of
Trustees. The County will appoint 11 or 55% of the governing body of the
Corporation (at least one of whom shall be a Pitt County physician). The UNC Board
of Governors will appoint the remaining 9 seats or 45% of the governing body of the
Corporation. Of these 9, one member will be appointed from a slate of four persons
nominated by a nominating committee composed only of trustees appointed by UNC
Board of Governors. Neither the County nor UNC Board of Governors shall remove
any of their appointed Trustees except for cause.

Effective this ___ day of __________, 1998.

ATTEST:

Secretary

ATTEST:

Secretary

ATTEST:

Secretary

ATTEST:

Secretary

BOARD OF GOVERNORS OF
THE UNIVERSITY OF NORTH CAROLINA
By: ____________________________
Chairman

BOARD OF TRUSTEES
PITC COUNTY MEMORIAL HOSPITAL
By: ____________________________
Chairman

PITC COUNTY BOARD OF
COMMISSIONERS
By: ____________________________
Chairman

BOARD OF TRUSTEES OF
EAST CAROLINA UNIVERSITY
By: ____________________________
Chairman
May 6, 2019

Via Electronic & First Class Mail

Board of Trustees of Vidant Medical Center
Attn: Dr. Shirley Carraway, Chair (shirleycarraway@suddenlink.net)
Vidant Medical Center
Post Office Box 6028
Greenville, NC 27835

Pitt County Board of Commissioners
Attn: Beth Ward, Chair (bwardelizabeth@gmail.com)
1717 W. 5th Street
Greenville, NC 27834

RE: August 2013 Affiliation Agreement

Dear Dr. Carraway and Commissioner Ward:

This Firm has been retained to advise East Carolina University ("ECU"), including the Brody School of Medicine at East Carolina University ("BSOM"), and the Board of Governors of The University of North Carolina ("UNC") (collectively, the "University Parties") regarding that certain Affiliation Agreement between the Board of Trustees of Vidant Medical Center (the "VMC Board"), the Board of Commissioners of Pitt County (the "County"), ECU, and UNC, which was entered into on or about August 8, 2013 (the "Agreement"). The Agreement provides that Pitt County Memorial Hospital dba Vidant Medical Center ("VMC") is to be utilized as the primary teaching hospital of BSOM.

Under Section III of the Agreement, VMC is to be governed by the 20-member VMC Board. The County is to appoint 11 members (or 55% of the members), and UNC is to appoint nine members (or 45% of the members) to the VMC Board. The Agreement expressly provides that neither the County nor UNC shall remove any of their appointed Trustees except for cause. Moreover, the Executive Committee of the VMC Board is to consist of nine members, such that a total of five members of the Executive Committee
are members of the VMC Board appointed by the County, and four members of the Executive Committee are members of the VMC Board appointed by UNC. Such representation by UNC appointees to the VMC board and its predecessor, Pitt County Hospital, has been an integral and essential component of the relationship and responsibilities of the parties dating back to the original affiliation agreement in 1975.

It has come to the attention of the University Parties that, on April 24, 2019, VMC (with the consent of the County) filed Articles of Amendment with the North Carolina Secretary of State pursuant to which the County is to continue to appoint 11 members to the VMC Board, but the remaining nine members are to be appointed by members of the VMC Board. Under the Articles of Amendment, UNC is to have no appointments to the VMC Board.

Of course, the affiliation among VMC and the University Parties serves an important public interest and benefits residents of Pitt County, other counties in Eastern North Carolina, and the State of North Carolina. The University Parties take their stewardship responsibility regarding this important public interest with the utmost seriousness. The unexpected elimination of the appointment powers vested in UNC, accomplished by VMC without consultation, creates serious concerns about a relationship which has served this public interest well since its inception. At a minimum, any such change should be undertaken only after careful consideration and candid communications by all of the affected parties.

As such, the University Parties suggest that all parties to the Agreement meet to discuss how best to continue the cooperation between the parties. We would propose a meeting during the week of May 6, 2019, and request that you or your counsel respond to this letter with your availability for such a meeting no later than 5:00 p.m. on Tuesday, May 7, 2019. Additionally, the University Parties respectfully request that no action be taken with respect to the three vacancies that currently exist on the VMC Board until the parties have concluded their discussions.

Please note that this letter is in no way intended to waive the University Parties' rights and remedies, and the University Parties hereby expressly reserve all of their rights and remedies under the Agreement and applicable law.
Board of Trustees of Vidant Medical Center
Pitt County Board of Commissioners
May 6, 2019
Page 3

We look forward to hearing from you. With best wishes, I am

Very truly yours,

[Signature]

Noah H. Huffstetler III

NHH:jb
cc: Mary Beth Johnston (via electronic mail)
    Thomas C. Shanahan (via electronic mail)
May 9, 2019


Via Electronic & First Class Mail

Board of Trustees of Vidant Medical Center
Attn: Dr. Shirley Carraway, Chair (shirleycarraway@suddenlink.net)
Vidant Medical Center
Post Office Box 6028
Greenville, NC 27835

Pitt County Board of Commissioners
Attn: Beth Ward, Chair (bwardelizabeth@gmail.com)
1717 W. 5th Street
Greenville, NC 27834

RE: Notice and Opportunity to Cure

Dear Dr. Carraway and Commissioner Ward:

As you were made aware by letter dated May 2, 2019, this Firm has been retained to advise East Carolina University ("ECU"), including the Brody School of Medicine at East Carolina University ("BSOM"), and the Board of Governors of The University of North Carolina ("UNC") (collectively, the "University Parties") regarding that certain Affiliation Agreement between the Board of Trustees of Vidant Medical Center (the "VMC Board"), the Board of Commissioners of Pitt County (the "County"), ECU, and UNC, which was entered into on or about August 8, 2013 (the "Agreement").

Pursuant to the Agreement, Pitt County Memorial Hospital dba Vidant Medical Center ("VMC") is to be utilized as the primary teaching hospital of BSOM. Moreover, under Section III of the Agreement, VMC is to be governed by the 20-member VMC Board for which the County is to appoint 11 members (or 55% of the members), and UNC is to appoint nine members (or 45% of the members). As noted in our May 2 letter, such representation by UNC appointees to the VMC Board and its predecessor, Pitt County Hospital, has been an integral and essential component of the relationship and
responsible of the parties dating back to the original affiliation agreement in 1975 as reaffirmed in 1994 and 2013.

However, on April 24, 2019, VMC (with the consent of the County) filed Articles of Amendment with the North Carolina Secretary of State pursuant to which the County is to continue to appoint 11 members to the VMC Board, but UNC is to have no appointments. Rather, the remaining nine members are to be appointed by members of the VMC Board. This change in appointments and governance—made without the knowledge or consent of any of the University Parties—constitutes a material breach of the Agreement.

Please accept this letter as written notice of the material breach of the Agreement and as a basis for the University Parties seeking to enforce the full range of legal remedies available to them under the Agreement.

Recognizing that the affiliation between VMC and BSOM benefits not only the parties to the Agreement but also members of the public served by VMC and BSOM, representatives of the parties to the Agreement are scheduled to meet next Thursday, May 16, to discuss how best to continue the long history of "sympathetic cooperation" (a term used in the Agreement) between the parties. Our clients ask that the County and the VMC Board refrain from making changes to the VMC Board membership and, specifically, refrain from replacing any members of the VMC Board appointed by the BOG with members appointed by the County or the VMC Board, while the parties are engaged in discussions. Moreover, please accept this letter as notice that, if any members of the VMC Board appointed by the BOG are replaced with members appointed by the County or the VMC Board at any time, the University Parties will deem such action as the County's and the VMC Board's refusal to cure the above-noted material breach and will immediately invoke their legal remedies.

While we are hopeful that discussions regarding governance of the VMC Board will be productive, the University Parties intend to protect their rights under the Agreement and the law. As such, the University Parties hereby expressly reserve all of their rights and remedies under the Agreement and applicable law.
We look forward to next week's meeting. With best wishes, I am

Very truly yours,

Noah H. Huffstetler III

NHH:jb
cc: Mary Beth Johnston (via electronic mail)  
    Thomas C. Shanahan (via electronic mail)