

RESOLUTION NO. 2018-05
of the
BOARD OF TRUSTEES OF THE INDIAN RIVER COUNTY HOSPITAL DISTRICT
to approve
AN AMENDED AND RESTATED LEASE AGREEMENT, THE RELATED
GUARANTY, A MEMBER SUBSTITUTION AGREEMENT CONCERNING
INDIAN RIVER MEMORIAL HOSPITAL, INC.
and
VARIOUS OTHER DOCUMENTS RELATED TO THE TRANSACTION WITH THE
CLEVELAND CLINIC FOUNDATION AND ITS AFFILIATES

Whereas, the Indian River County Hospital District (the “District”) is a special taxing district created by the Legislature of the State of Florida, Chapter 2003-382, Laws of Florida and located in Indian River County, Florida.

Whereas, the District is organized and operated to establish, construct, purchase, operate, maintain and lease (as Lessee or Lessor) such health facilities and provide health and medical services as are necessary and desirable for the preservation of the health of the residents of the District and for the good of the public of the District, all of which are set forth in the District’s enabling legislation.

Whereas, the District’s Board of Trustees (the “Trustees”), a body politic and corporate, is the governing body of the District.

Whereas, the District is, among other things, the owner of real estate, facilities, fixtures and other property leased to Indian River Memorial Hospital, Inc., d/b/a Indian River Medical Center (“IRMC”), for the operation of the Indian River Medical Center (“Hospital”) and operated by IRMC as part of a related healthcare system (“Healthcare System”) all as set forth in that certain Amended and Restated Lease of Hospital Facilities and Agreement for Operation of Indian River Memorial Hospital dated November 15, 2012 by and between IRMC and the District (the “Current Lease”).

Whereas, the Trustees have authority to lease the Hospital and other District property if the Trustees determine that such action is in the best interest of the citizens of Indian River

County and the surrounding area (the “Affected Community”) and the preservation of public health.

Whereas, Florida Statute Section 155.40(1) provides that in the interest of providing quality healthcare to the citizens of the State, the Trustees may lease the Hospital and shall determine the terms, conditions, covenants and agreements contained in any lease.

Whereas, demographic, financial, legal, and political forces are driving unprecedented changes to the health care delivery system in the United States and in the State of Florida, including passage of the Patient Protection and Affordable Care Act of 2010, Budget Control Act of 2011, various additional federal legislation amending said acts, ongoing federal deficit reduction efforts, Florida legislature’s enactment of Medicaid reimbursement reduction for hospitals and authorization of a statewide Medicaid managed care program, along with further Medicaid cutbacks expected in the future, all of which are creating extraordinary financial challenges and risk for the Hospital and the District.

Whereas, because of these changes in recent years it has been difficult for the Hospital and the Healthcare System to remain financially secure without financial support from the District.

Whereas, the Hospital’s continued ability to survive these unprecedented changes requires resources of capital and clinical expertise not presently available to the Hospital or Healthcare System as a free-standing independent single hospital system, and these trends have caused the Trustees to become increasingly concerned about the Hospital’s and Healthcare System’s continued viability in the future.

Whereas, due to the above concerns, each of the Board of the District and the Board of IRMC in 2017 approached eight (8) large health care systems (Adventist Health System, Cleveland Clinic, HCA, Health First, Orlando Health, RCCH Healthcare Partners, Steward Health Care System and Universal Health Services, Inc.) with a view toward identifying a prospective affiliation that would:

- fulfill the vision for a state-of-the-art, full-service general acute care hospital in Indian River County that will meet the future needs of the Affected Community and be a “facility of choice” for area residents,
- share a common set of values and mission with the District, including the continued commitment to charity care,
- have a passion for meeting the health care needs of residents of the District and the surrounding area by expanding core services and specialty services,
- have increased access to capital and willingness to invest in the Hospital, the Healthcare System and in the vision for the Hospital,
- help attract and retain highly qualified physicians and improve the Hospital’s and Healthcare System’s reputation for quality and safety,
- improve the Hospital’s clinical integration locally, regionally and nationally to maintain and improve its reputation for quality and safety, and
- strengthen the ability to meet the medical needs of the Affected Community in the future.

Whereas, each of the eight large health care systems presented the Trustees with proposals to affiliate with the District and IRMC.

Whereas, the Trustees of the District and operating Board of Directors of IRMC, in separate meetings, selected four finalists (specifically Adventist Health System, Cleveland Clinic Foundation, HCA, and Orlando Health) to provide to them a more detailed proposal including an outline of financial terms of any proposed relationship for their consideration.

Whereas, the District Trustees, in meetings properly noticed and open to the public, visited and evaluated representative hospital facilities of each of the four finalists to obtain firsthand information concerning each hospital system and to discuss its operations and observe its culture of delivering health care.

Whereas, after parallel and similar public, open and transparent evaluation processes and with the input of their respective selected advisors, and members of the Affected Community, the Trustees and the governing board of IRMC selected The Cleveland Clinic Foundation, an Ohio not-for-profit corporation (the “Cleveland Clinic Foundation”), a recognized leading healthcare system in the United States in terms of quality and innovation to establish a relationship with an integrated health care delivery system to improve quality and enhance access to quality medical care for the Affected Community, and to advance the District’s, IRMC’s and Cleveland Clinic Foundation’s combined missions through coordinated planning, effective allocation of resources and services, cost savings and integrated health care delivery in order to achieve measurable national-leading high quality care and best patient experience.

Whereas, as part of the process in the selection of Cleveland Clinic Foundation, the District, IRMC and Cleveland Clinic Foundation entered into the non-binding letter of intent dated February 22, 2018 (the “LOI”) for purposes of carrying out the transactions contemplated therein and as generally described in the proposal materials provided by Cleveland Clinic Foundation to the District (the “Proposed Transaction”).

Whereas, the District engaged a valuation firm, Stout Risius Ross, LLC (herein “Stout”) with expertise in analyzing healthcare transactions such as the Proposed Transaction for its fairness to the District.

Whereas, as part of the Proposed Transaction and pursuant to Section 155.40(23), Florida Statutes, and the other relevant provisions of Section 155.40, Florida Statutes, the Trustees and the governing Board of IRMC have agreed to amend and restate the Current Lease (hereafter, the “Amended and Restated Lease Agreement”) with Cleveland Clinic Foundation becoming Guarantor of the Lease pursuant to a Guaranty Agreement in substantially the form attached hereto as **Exhibit “A”**.

Whereas, pursuant to the Member Substitution Agreement by and between Cleveland Clinic Florida, Inc., Cleveland Clinic Foundation, IRMC, IRMC affiliates, and District

(“Member Substitution Agreement”) Cleveland Clinic Florida (a non-profit corporation), shall become the sole Member of IRMC.

Whereas, pursuant to the Member Substitution Agreement, Cleveland Clinic Foundation has agreed to provide capital funding in the amount of Two Hundred Fifty Million Dollars over ten years to enhance and improve the Hospital and the Healthcare System.

Whereas, fundamental agreements have been reached on all major aspects of an Amended and Restated Lease Agreement, including all exhibits and schedules thereto, with the Amended and Restated Lease Agreement substantially in the form attached as **Exhibit “B”** hereto.

Whereas, fundamental agreements have been reached on all major aspects of a Member Substitution Agreement substantially in the form attached as **Exhibit “C”** hereto.

Whereas, Stout has delivered its fairness opinion to the District and the Trustees concluding the Proposed Transaction provides fair value to the District for the assets it is leasing as part of the Proposed Transaction, a copy of which is attached hereto as **Exhibit “D”**.

Whereas, the District has provided regular updates on the progress of the Proposed Transaction at its regular Board meetings culminating in in-depth presentations of the Proposed Transaction on September 25, 2018, September 27, 2018 and October 3, 2018.

Whereas, as part of the Proposed Transaction, the District has agreed to continue providing partial funding for indigent care to the Hospital for a period of up to thirty-six (36) months after the closing of the Proposed Transaction pursuant to the Third Amended and Restated Agreement for Indigent Care Services between the District and IRMC (“Third Amended Indigent Care Agreement”) attached hereto in substantially the form attached hereto as **Exhibit “E”**.

Whereas, for up to the first thirty-six (36) months, IRMC and Cleveland Clinic Foundation will provide the remaining funding for indigent care at the Hospital, and thereafter IRMC and Cleveland Clinic Foundation will provide all funding for indigent care at the Hospital thus relieving the District of the expense of funding such indigent care which in the past has involved funding of approximately Seven Million Dollars (\$7,000,000) per year and in the future may involve even more funding.

Whereas, as part of the Proposed Transaction the District has agreed to provide funding for the Partners in Women's Health Program pursuant to the Amended and Restated Agreement for Operation and Funding of the Partners in Women's Health Program between the District and IRMC ("Partner's Agreement") in substantially the form attached hereto as **Exhibit "F"**.

Whereas, as part of the Proposed Transaction the District has agreed to enter into a Declaration of Easements, Covenants, Conditions and Restrictions (the "Declaration") in substantially the form attached hereto as **Exhibit "G"** which would affect the real property being leased to IRMC and also the property owned by the District which lies adjacent to the real property being leased to IRMC.

Whereas, pursuant to Section 155.40(2)(a), Florida Statutes, the Trustees of the District have been provided a copy of the Articles of Incorporation (and all amendments thereto), for IRMC, a Florida non-profit corporation, all of which are attached hereto as **Exhibit "H"**, which is the Tenant under the Amended and Restated Lease Agreement.

Whereas, **Exhibits "A," "B," "C," "E," "F," and "G" and "H"** are hereby incorporated by reference as part of this Resolution, but as is common in these agreements, details and issues continue to need revision through final negotiations.

Whereas, the District, IRMC, IRMC affiliates, Cleveland Clinic Foundation, and Cleveland Clinic Foundation's affiliates, have mutually determined that their respective purposes and objectives can best be fulfilled by entering into the Amended and Restated Lease Agreement, the Member Substitution Agreement, the Declaration, the Guaranty Agreement, the

Third Amended Indigent Care Agreement, the Partner's Agreement, and other such related agreements and documents as set forth in these transaction documents.

~~Whereas, pursuant to Section 155.40(2)(a), Florida Statutes, the Trustees of the District have been provided a copy of the Articles of Incorporation (and all amendments thereto) for IRMC, a Florida non-profit corporation, which is the Tenant under the Amended and Restated Lease Agreement.~~

~~Whereas, the Trustees of the District hereby approve the Articles of Incorporation (and all amendments thereto) of IRMC as presented.~~

NOW, THEREFORE, be it resolved:

SECTION 1. Findings. The Trustees hereby find and determine:

1. The recitals set forth above are true and correct, and are adopted as findings and determinations of the Trustees.
2. Based upon these findings and determinations, the Trustees' discussions in seeking affiliation with other health care systems, comments from the public and from members of the Affected Community, consultant reports, the future prospects of the Hospital, and information coming before the Trustees at the meeting held on this date, and at all prior meetings held regarding this matter, the Proposed Transaction is necessary for the continued viability of the Hospital and healthcare system, the preservation of the public health, and the public good.
3. The Trustees find that the Proposed Transaction is in the best interests of the Affected Community based on the facts coming to its attention and as set forth herein. The Trustees further find that the Amended and Restated Lease Agreement provides for an orderly transition of the operation and management of the Hospital and such agreement provides for the return of the facility to the District upon the termination of the Lease. The Trustees also find that the Amended and Restated Lease Agreement provides for the continued treatment of indigent patients pursuant to the Florida Health Care Responsibility Act and pursuant to Chapter 87-92, Laws of Florida.

4. After review of the opinion by Stout attached hereto as **Exhibit “D”**, the Trustees find that the Amended and Restated Lease Agreement with IRMC represents fair value to the District and is appropriate for the District in light of all the factors surrounding the Proposed Transaction.
5. The Trustees authorize the final negotiations and execution of the Guaranty Agreement in substantially the form attached hereto as **Exhibit “A”** and the Amended and Restated Lease Agreement in substantially the form attached hereto as **Exhibit “B”** along with other related documents, which are hereby approved and adopted.
6. The Trustees authorize the final negotiations and execution of the Member Substitution Agreement substantially in the form attached hereto as **Exhibit “C”** along with other related documents, which are hereby approved and adopted.
7. The Trustees authorize the final negotiations and execution of the Third Amended Indigent Care Agreement substantially in the form attached hereto as **Exhibit “E”** along with other related documents, which are hereby approved and adopted.
8. The Trustees authorize the final negotiations and execution of the Partner’s Agreement in substantially the form attached hereto as **Exhibit “F”** along with the other related documents which are hereby approved and adopted.
9. The Trustees authorize the final negotiations and execution of the Declaration in substantially the form attached hereto as **Exhibit “G”** along with other related documents, which are hereby approved and adopted.
- [10. The Trustees hereby approve the Articles of Incorporation \(and all amendments thereto\) attached hereto as **Exhibit “H”** of IRMC as presented.](#)

SECTION 2. Authorization. The Trustees authorize, empower, approve all actions taken and to be taken, and direct the Chair, Secretary and Treasurer, and Executive Director of the District (either singly or in combination), to act on their behalf to take such other actions and execute such documents as may be appropriate or necessary to close the Proposed Transaction.

SECTION 3. Severability. If any section, paragraph, clause or provision of this Resolution shall be held to be invalid or ineffective for any reason, the remainder of this resolution shall continue in full force and effect, it being expressly found and declared that the remainder of this resolution would have been adopted despite the invalidity or ineffectiveness of such section, paragraph, clause or provision.

SECTION 4. Appointed Representative. The Trustees authorize the Chair of the Trustees, in the name and on behalf of the District, to be their appointed representative and to negotiate, execute and deliver the Amended and Restated Lease Agreement, the Member Substitution Agreement, the Third Amended Indigent Care Agreement, the Partner's Agreement, the Declaration, and other documents related to the Proposed Transaction, accept the Guaranty, and to take such other actions as are necessary to carry out the intent and accomplish the purpose of the foregoing and the actions contemplated thereby.

SECTION 5. Effective Date. This resolution shall take effect immediately upon its adoption.

Dated this _____ day of _____, 2018.

INDIAN RIVER COUNTY HOSPITAL DISTRICT

By: _____
Marybeth Cunningham, Chair

ATTEST:

Ann Marie McCrystal, Secretary

List of Exhibits:

Exhibit "A" -- Guaranty Agreement

Exhibit "B" -- Amended and Restated Lease Agreement

Exhibit "C" -- Member Substitution Agreement

Exhibit "D" -- Fairness Opinion

Exhibit "E" -- Third Amended Indigent Care Agreement

Exhibit "F" -- Partner's Agreement

Exhibit "G" -- Declaration

[Exhibit "H" -- Articles of Incorporation and Amendments](#)

Summary report:	
Litéra® Change-Pro 7.5.0.185 Document comparison done on 10/2/2018 3:02:45 PM	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original DMS: iw://FSDMS/ORLANDO1/12492905/11	
Modified DMS: iw://FSDMS/ORLANDO1/12492905/12	
Changes:	
<u>Add</u>	8
Delete	4
<u>Move From</u>	7
<u>Move To</u>	7
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	26