

DRAFT - 9/24/18

GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT ("Guaranty"), made this ____ day of _____, 2018, and given by THE CLEVELAND CLINIC FOUNDATION, an Ohio not for profit corporation ("Guarantor"), whose address is 9500 Euclid Avenue, NA-4, Cleveland, Ohio 44195, Attention: _____, to induce INDIAN RIVER COUNTY HOSPITAL DISTRICT, an independent special district created by the Legislature of the State of Florida, as Lessor ("Lessor"), whose address is 3730 7th Terrace, Suite 204-B, Vero Beach, Florida 32960, Attention: Chair of the Board of Trustees, to enter into an Amended and Restated Lease Agreement dated _____, 2018 ("Lease") with INDIAN RIVER MEMORIAL HOSPITAL, INC., d/b/a Indian River Medical Center, a Florida not-for-profit corporation, as Lessee ("Lessee"), whose address is 1000 36th St., Vero Beach, Florida 32960, Attention: President and Chief Executive Officer.

For valuable consideration, the receipt and sufficiency of which is acknowledged, it is agreed:

1. The Guarantor, absolutely and unconditionally guarantees to the Lessor, its successors and assigns, the payment of rent when due, whether by acceleration or otherwise, and performance of the covenants in the Lease to be made and performed by Lessee, together with all attorneys' fees, including reasonable attorneys' fees on appeal, costs and expenses of collection incurred by the Lessor, in connection with any matter covered by this Guaranty, in the enforcement of the Lessee's obligations under the Lease, and/or this Guaranty.

2. The liability of Guarantor shall continue until payment is made for rent now due or hereafter to become due and/or the performance of every obligation in the Lease is completed including those arising during any and all renewal terms, and until payment is made of any loss or damage incurred by the Lessor with respect to any matter covered by this Guaranty.

3. The Guarantor consents, and without affecting the Guarantor's liability to the Lessor hereunder, that the Lessor may, without notice to or consent of the Guarantor (but with the consent of Lessee), upon such terms as it may deem advisable: extend, modify, renew and/or terminate, in whole or in part, the Lease; extend or modify the time of payment of rent or the performance of the covenants in said Lease; modify or add to the terms of the Lease during the term thereof or any extension or renewal terms; release, surrender, exchange, modify, impair, or extend the period of duration, or the time for performance or payment, of any collateral securing any obligation of the Lessee to the Lessor; settle or compromise any claim of the Lessor against the Lessee, or against any other person, firm or corporation, whose obligation is held by the Lessor as collateral security for any obligation of the Lessee to the Lessor; apply any security and direct the order or manner of sale as Lessor in its discretion may determine. The Guarantor hereby ratifies and confirms any such extension, renewal, release, surrender, exchange,

modification, addition, impairment, settlement, compromise or termination; and all such actions shall be binding upon the Guarantor, who hereby waives all defenses, counterclaims, or offsets which the Guarantor might have by reason thereof (other than the defense of payment or performance).

4. The Guarantor hereby consents, without affecting Guarantor's liability to Lessor hereunder, but subject to the terms of the Lease, to the assignment of the Lease and/or the subletting of the leased premises without notice to or consent of Guarantor.

5. The Lessor may, without notice to or consent of the Guarantor, but subject to any terms and conditions of the Lease, assign or transfer the Lease or any part of the obligations and liabilities due or to become due pursuant to said Lease, and each and every immediate and successive assignee or transferee of the Lease or any of the obligations or liabilities pursuant thereto shall, to the extent the interest of such assignee or transferee in the Lease, obligations, or liabilities be entitled to the benefits of this Guaranty to the same extent as if such assignee or transferee were the Lessor; provided, however, that Lessor shall have an unimpaired right, prior and superior to that of any such assignee or transferee to enforce this Guaranty for the benefit of Lessor as the Lessor's interest in the Lease and obligations and liabilities of Lessee which Lessor has not assigned or transferred.

6. The Guarantor expressly waives: (i) notice of acceptance of this Guaranty and of presentment, demand and protest; (ii) notice of any default hereunder or under the Lease and of all indulgences; (iii) demand for observance, performances, or enforcement of any terms or provisions of this Guaranty or the Lease.

7. In the event of a Major Event of Default under the Lease which entitles Lessor to accelerate amounts due under the Lease pursuant to Section 18.4(b), then Guarantor shall also be liable for payment of such accelerated amounts under Section 18.4(b), in addition to all other rights and remedies available to Lessor under the Guaranty and Lease.

8. Payment by the Guarantor of any amount pursuant to this Guaranty shall not in any way entitle the Guarantor to any right, title or interest (whether by way of subrogation or otherwise) in and to any of the rights or remedies the Lessor may have against the Lessee, unless and until all of the obligations of the Lessee under the Lease have been performed.

9. The Guarantor represents that, at the time of the execution and delivery of this Guaranty, nothing exists to impair the effectiveness of the liability of the Guarantor to the Lessor hereunder, or the immediate taking effect of this Guaranty as the sole agreement between Guarantor and the Lessor with respect to guaranteeing the Lessee's obligation to the Lessor.

10. The Lessor may at its option proceed in the first instance against the Guarantor to collect any obligation covered by this Guaranty, without first proceeding against the Lessee, or

any other person, firm or corporation and without first resorting to any property at any time held by the Lessor as collateral security. This Guaranty is a primary obligation of the Guarantor.

11. The whole of this Guaranty is herein set forth and there is no verbal or other written agreement, and no understanding or custom affecting the terms hereof. This Guaranty can be modified only by a written instrument signed by the party to be charged therewith.

12. Guarantor agrees to pay reasonable attorneys' fees at both trial and appellate levels, and in arbitration, and all other costs and expenses which may be incurred by Lessor in the enforcement of the Lessee's obligations and/or of this Guaranty, including all costs of arbitration.

13. Where any one or more of Lessees are corporations, limited liability companies or partnerships, it is not necessary for Lessor to inquire into the powers of Lessees or the officers, directors, partners, members, managers or agents acting or purporting to act in its behalf and any indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed hereunder.

14. The Guarantor warrants that, where applicable, it has full and complete corporate authority to enter this Guaranty and bind the corporation for all purposes to its terms.

15. This Guaranty is delivered and made in, and shall be construed pursuant to the laws of the State of Florida, and is binding upon the Guarantor and its legal representatives, and shall inure to the benefit of the Lessor, its successors and assigns. Subject to the terms of the Lease, in the event that any obligation of the Lessee is assigned, transferred or participated, the joint and several liability of the Guarantor shall inure to the benefit of any such assignee, transferee or participant.

16. All disagreements, disputes, controversies or claims arising out of or relating to this Guaranty, that cannot be resolved independently by the relevant parties, shall be resolved by arbitration in accordance with the provisions of Section 20 of the Lease.

17. Notwithstanding anything contained herein to the contrary, and so long as there are no uncured defaults under the Lease or this Guaranty beyond applicable grace periods, in the event of an Assignment or Change of Control (as defined in the Member Substitution Agreement) of Lessee, which is permitted under the Lease, Guarantor shall have the right to tender a "Substitute Guarantor" (as defined below) and a "Substitute Guaranty" (as defined below), in which event THE CLEVELAND CLINIC FOUNDATION, an Ohio not for profit corporation shall be released from all liability under this Guaranty and the same shall be deemed null and void upon the effective date of the Substitute Guaranty in which the Substitute Guarantor agrees, in addition to the other obligations under the Substitute Guaranty, to be responsible for all then outstanding obligations of Guarantor. As used herein the term

“Substitute Guarantor” shall mean an entity (i) operating a health system that has a total operating revenue (excluding investment income, extraordinary items and other non-operating gains) of at least \$1,500,000,000.00, based upon the immediately trailing twelve (12) month period; (ii) having as its headquarters a location within the United State of America; (iii) whose EBITDA (earnings before interest, tax, depreciation and amortization) represents an average annual return on total operating revenue (excluding investment income, extraordinary items and other non-operating gains) for the preceding three (3) years of at least four percent; and (iv) which executes a guaranty in substantially the form attached to the Lease as Exhibit “E” (the “Substitute Guaranty”). [**Note: Financial covenants remain under discussion**].

IN WITNESS WHEREOF, the Guarantor has signed this agreement as of the date first indicated above.

GUARANTOR:

**THE CLEVELAND CLINIC
FOUNDATION**, an Ohio not for profit
corporation

By: _____
Name: _____
Title: _____