

**CONFIDENTIAL**

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**MEMBER SUBSTITUTION AGREEMENT  
BY AND AMONG  
THE CLEVELAND CLINIC FOUNDATION,  
CLEVELAND CLINIC FLORIDA (A NONPROFIT CORPORATION)<sup>1</sup>,  
AND  
INDIAN RIVER MEMORIAL HOSPITAL, INC.,  
INDIAN RIVER HOSPITAL FOUNDATION, INC.,  
INDIAN RIVER HEALTH SERVICES, CORPORATION,  
HEALTH SYSTEMS OF INDIAN RIVER, INC.,  
VERO RADIOLOGY ASSOCIATES, LLC,  
EMERGENCY PHYSICIANS OF VERO BEACH, LLC,  
INDIAN RIVER MEDICAL ASSOCIATES LLC,  
AND  
INDIAN RIVER COUNTY HOSPITAL DISTRICT**

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**October [●], 2018**

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<sup>1</sup> Note to draft: to be confirmed, but entity taken from CCF org chart provided in diligence.

## **LIST OF EXHIBITS**

<b><u>EXHIBIT</u></b>	<b><u>DESCRIPTION</u></b>
A	Amended IRMC Governing Documents
B	Amended Cleveland Clinic Florida Governing Documents
C	Amended IRMC Subsidiaries Governing Documents
D	Amended IRMC Non-Subsidiaries Governing Documents
E	IRMC Entities and Ownership
F	Guaranty Agreement
G	Amended and Restated Lease
H	Declaration of Easements
I	Foundation Agreement Amendment

## **LIST OF SCHEDULES**

<b><u>SCHEDULE</u></b>	<b><u>DESCRIPTION</u></b>
Schedule 3.1(a)	Commitment Integrity Committee
Schedule 6.2	Voting Trusts and Agreements
Schedule 6.4(b)	IRMC Entity Conflicts and Required Approvals and Consents
Schedule 6.5(a)	IRMC Financial Statements
Schedule 6.7	IRMC Interim Changes
Schedule 6.8	Material Contract Breaches
Schedule 6.10(c)	Actions Against Licenses and Permits
Schedule 6.13(a)-1	Owned Real Property
Schedule 6.13(a)-2	Leases of Owned Real Property
Schedule 6.13(a)-3	Actions Against Owned Real Property
Schedule 6.13(b)	Environmental Laws
Schedule 6.14	IRMC Leases
Schedule 6.14(g)	Non-Renewals of IRMC Leases
Schedule 6.14(h)	Encumbrances on IRMC Leases
Schedule 6.15	Exceptions to Title to Assets
Schedule 6.17	Exceptions to Insurance Policies
Schedule 6.19(b)	Union Activities
Schedule 6.21	Exceptions to Payment Programs
Schedule 6.22	Exceptions to Accreditations
Schedule 6.23	Compliance Matters
Schedule 8.10	CCF Interim Changes
Schedule 9.7	Third Party Authorizations

## MEMBER SUBSTITUTION AGREEMENT

**THIS MEMBER SUBSTITUTION AGREEMENT** (the “**Agreement**”) is made and entered into as of October [●], 2018 (the “**Execution Date**”) by and among The Cleveland Clinic Foundation, an Ohio not-for-profit corporation (“**CCF**”), Cleveland Clinic Florida (A Nonprofit Corporation), a Florida not-for-profit corporation (“**Cleveland Clinic Florida**”),<sup>2</sup> Indian River Memorial Hospital, Inc., d/b/a Indian River Medical Center, a Florida not-for-profit corporation (“**IRMC**”), Indian River Hospital Foundation, Inc., a Florida not-for-profit corporation (“**Foundation**”), Indian River Health Services Corporation, a Florida not-for-profit corporation (“**Health Services**”), Health Systems of Indian River, Inc., a Florida not-for-profit corporation (“**HSIR**”), Vero Radiology Associates, LLC, a Florida limited liability company (“**VRA**”), Emergency Physicians of Vero Beach, LLC, a Florida limited liability company (“**EPVB**”), Indian River Medical Associates LLC, a Florida limited liability company (“**IRMA**”),<sup>3</sup> and Indian River County Hospital District, a special taxing district located in Indian River County, Florida, and created by the Legislature of the State of Florida (“**District**”). CCF, IRMC, Foundation, Health Services, HSIR, VRA, EPVB, IRMA and District are collectively referred to herein as the “**Parties.**” Article 1 contains a glossary of capitalized defined terms used in this Agreement.

### RECITALS

WHEREAS, IRMC is located in Vero Beach, Florida, and is, among other things, the licensed operator of the Medical Center. IRMC also sponsors a health system that includes Foundation, Health Services, HSIR and VRA as direct subsidiaries of IRMC (the “**IRMC Subsidiaries**”), and EPVB and IRMA, as non-subsidiary affiliates of IRMC (EPVB and IRMA are collectively referred to herein as the “**IRMC Non-Subsidiaries**”). IRMC, the IRMC Subsidiaries and the IRMC Non-Subsidiaries are collectively referred to herein as the “**IRMC System**” or the “**IRMC Entities**”, and each individually referred to herein as an “**IRMC Entity**”.

WHEREAS, CCF is a multispecialty academic medical organization that integrates clinical and hospital care with research and education, with a reputation as a recognized leader in the provision of quality healthcare services across its Ohio, Florida and other national and international locations.

WHEREAS, District is, among other things, the owner of the Hospital Facilities leased by IRMC for the operation of the Medical Center as set forth in the Lease.

WHEREAS, the Parties wish to continue to improve quality and enhance access to health care for citizens of Indian River County, Florida and its surrounding regions.

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2. Note to draft: assumption is that this entity will serve as the new member of IRMC, and provisions drafted accordingly.
  3. Note to draft: CCF to advise whether desire is for EPVB and IRMA, which are non-operational, to be part of the transaction or wound-down/dissolved.

WHEREAS, the Parties wish to work together in an integrated manner to address the needs of the IRMC System, CCF and their patients in light of health care reform, with the goal of benefiting patients, including establishing policies that take into consideration their ability to pay, by giving them increased access to certain agreed integrated primary, secondary and advanced tertiary services.

WHEREAS, the Parties wish to continue to improve quality, enhance access and accelerate the building of a preeminent, regionally significant and locally-responsive health care delivery system that provides value-based healthcare services throughout the region through the combination of the IRMC System and CCF (the “**Combination**”) into an integrated health care delivery system as set forth herein (the “**Delivery System**”).

WHEREAS, the combination of the IRMC System and CCF into the Delivery System will benefit community residents of Indian River County, Florida and its surrounding regions, including policies that take into account their ability to pay.

WHEREAS, as a result of their discussions, IRMC, CCF and District entered into a Letter of Intent dated February 22, 2018 (“**Letter of Intent**”), pursuant to which they set forth their preliminary understandings and agreements regarding the nature and terms of the Combination.

WHEREAS, as contemplated by the Letter of Intent, the Parties wish to set forth the full and complete terms of their agreement with respect to the Combination among them and related matters.

**NOW, THEREFORE**, for and in consideration of the premises, and the agreements, covenants, representations and warranties hereinafter set forth, and other good and valuable consideration, the receipt and adequacy of which are forever acknowledged and confessed, the Parties agree as follows:

## **ARTICLE 1 DEFINITIONS**

In addition to the words and terms defined elsewhere in this Agreement, the following words and terms as used in this Agreement will have the following meanings, unless the context or use indicates another or different meaning or intent:

**1.1** “**Accreditations**” has the meaning set forth in Section 6.22.

**1.2** “**Affiliate**” means, with respect to a particular Entity (a) any Entity which controls, is under the Control of, or which is under common Control with, the subject Entity and (b) any trust for the primary benefit of such Entity or any of the foregoing. Notwithstanding anything to the contrary, for purposes of this Agreement EPVB and IRMA shall be deemed Affiliates of IRMC.

**1.3** “**Agreement**” means this Member Substitution Agreement among the Parties.

**1.4** “**Amended and Restated Lease**” has the meaning set forth in Section 15.2(a)(iv).

**1.5** “**Amended IRMC Governing Documents**” has the meaning set forth in Section 2.1(a).

**1.6** “**Amended IRMC Non-Subsidiaries Governing Documents**” has the meaning set forth in Section 2.1(d).

**1.7** “**Amended IRMC Subsidiaries Governing Documents**” has the meaning set forth in Section 2.1(c).

**1.8** “**Amended Schedule**” has the meaning set forth in Section 17.2.

**1.9** “**Amended Cleveland Clinic Florida Governing Documents**” has the meaning set forth in Section 2.1(b).

**1.10** “**Applicable Law**” means all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and any judgment, decree, order, writ or injunction of any court or regulatory authority that is applicable in the context of the usage of the term.

**1.11** “**Approved Amended Schedule**” has the meaning set forth in Section 17.2.

**1.12** “**Audited Financial Statements**” has the meaning set forth in Section 6.5(a).

**1.13** “**Bankruptcy and Equity Exception**” has the meaning set forth in Section 6.3(c).

**1.14** “**Benefit Plans**” has the meaning set forth in Section 6.20(a).

**1.15** “**Board**” means the board of directors, board of trustees, board of managers or equivalent governing body of an Entity.

**1.16** “**Breach Notice**” has the meaning set forth in Section 3.4.

**1.17** “**Business Day**” means a day that is not a Saturday, Sunday or legal holiday on which banks are authorized or required to be closed in Vero Beach, Florida.

**1.18** “**CCF**” has the meaning set forth in the introductory paragraph to this Agreement.

**1.19** “**CCF Closing Documents**” has the meaning set forth in Section 15.2(a).

**1.20** “**CERCLA**” has the meaning set forth in Section 1.41.

**1.21** “**Change of Control**” means with respect to an Entity (a) a merger or consolidation with any other Entity, (b) the sale or exchange of securities of the Entity resulting in the holders of a majority of the voting securities of the Entity immediately before such transaction holding less than a majority after such transaction, (c) the amendment of the Entity’s Governing Documents to grant a party other than the current Board or members of the Entity the right to designate, elect or remove a majority of the Entity’s Board, (d) the sale, lease, exchange or other disposition of all, or substantially all, of the assets of the Entity in a single or series of related transaction, and (e) a member substitution or joint operating arrangement pursuant to which a party other than the current Board or members of such Entity has the right to designate,

elect or remove a majority of such Entity's Board; provided that a transfer of the ownership of securities or membership interests of an Entity to another Entity within the same Control group shall not be a Change of Control.

**1.22** “**Cleveland Clinic Florida**” has the meaning set forth in the introductory paragraph to this Agreement.

**1.23** “**Closing**” has the meaning set forth in Section 15.1.

**1.24** “**Closing Date**” has the meaning set forth in Section 15.1.

**1.25** “**Closing Deadline**” has the meaning set forth in Section 15.1.

**1.26** “**Code**” means the Internal Revenue Code of 1986, 26 U.S.C. § 1, *et seq.*, as amended.

**1.27** “**Combination**” has the meaning set forth in the Recitals.

**1.28** “**Commitment Period**” means the ten year period commencing on the Closing Date.

**1.29** “**Commitment Integrity Committee**” has the meaning set forth in Section 3.1.

**1.30** “**Community Representative**” has the meaning set forth in Section 2.1(a)(i)(A)(3).

**1.31** “**Confidentiality Agreement**” has the meaning set forth in Section 9.8.

**1.32** “**Contemplated Transactions**” means the transactions contemplated by this Agreement and the other agreements, documents and instruments delivered by the Parties at the Closing hereunder.

**1.33** “**Control**” means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an Entity whether through ownership, membership, contract or otherwise.

**1.34** “**Declaration of Easements**” has the meaning set forth in Section 15.2(b)(vii).

**1.35** “**Delivery System**” has the meaning set forth in the Recitals.

**1.36** “**District**” has the meaning set forth in the introductory paragraph to this Agreement.

**1.37** “**District Closing Documents**” has the meaning set forth in Section 15.2(c).

**1.38** “**Encumbrance**” means any charge, claim, community property interest, condition, equitable interest, lien, option, pledge, security interest, right of first refusal or other restriction, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

**1.39 “Enforcement Action”** means a binding arbitration proceeding brought on behalf of IRMC by, and at the election of, the Commitment Integrity Committee pursuant to Section 3.4 hereof in order to enforce one or more of the Fundamental Commitments.

**1.40 “Entity”** means any corporation, partnership, limited liability company, joint venture, association, bank, trust company, trust or other entity, whether or not legal entities.

**1.41 “Environmental Law”** means federal, state or local statutes and ordinances, and all rules and regulations promulgated thereunder, common law, orders, consent decrees, permits, licenses, and binding judicial and administrative interpretations thereof, pertaining or relating to: (a) natural resources and the environment; (b) public and worker health and safety (with respect to exposure to Hazardous Substances); or (c) the reporting, generation, manufacture, processing, distribution, use, treatment, storage, disposal, emission, discharge, release, transport or other handling of any Hazardous Substances, including the Comprehensive Environmental Response, Compensation and Liability Act, as amended (“**CERCLA**”), and the Resource Conservation and Recovery Act, as amended.

**1.42 “EPVB”** has the meaning set forth in the introductory paragraph to this Agreement.

**1.43 “ERISA”** means the Employee Retirement Income Security Act of 1974, as amended.

**1.44 “Execution Date”** has the meaning set forth in the introductory paragraph to this Agreement.

**1.45 “Foundation”** has the meaning set forth in the introductory paragraph to this Agreement.

**1.46 “Foundation Agreement”** means that certain Agreement Regarding Return of Granted Funds dated December 20, 2017, by and between the District and Foundation.

**1.47 “Foundation Agreement Amendment”** has the meaning set forth in Section 15.2(c)(iii).

**1.48 “Foundation Closing Documents”** has the meaning set forth in Section 15.2(d).

**1.49 “Fundamental Commitments”** has the meaning set forth in Section 3.4.

**1.50 “Fundamental Representations”** means the representations and warranties set forth in Section 6.1 (Due Organization; Good Standing; Power), Section 6.2 (Affiliates and Subsidiaries), Section 6.3 (Corporate Authorization), Section 6.28 (Brokers), Section 7.1 (Due Organization; Good Standing; Power), Section 7.2 (Corporate Authorization), Section 8.1 (Due Organization; Good Standing; Power) and Section 8.2 (Corporate Authorization).

**1.51 “GAAP”** means Generally Accepted Accounting Principles in the United States.



**1.52 “Governing Documents”** means the articles of incorporation, articles of organization, certificate of incorporation, bylaws, partnership agreement, operating agreement, certificate of formation, shareholder agreements, or other documents by and through which a business organization is formed or governed.

**1.53 “Government”** means any federal, foreign, state or local legislature, executive, agency, board, division, instrumentality, commission, court of competent jurisdiction or tribunal, or any subdivision, department or branch of any of the foregoing, including any tax district, accreditation body or other quasi-governmental agency or authority.

**1.54 “Guaranty Agreement”** has the meaning set forth in Section 15.2(a)(iv).

**1.55 “Hazardous Substances”** means petroleum or petroleum products, polychlorinated biphenyls, asbestos containing materials, lead based paint, radioactive materials, toxic mold or fungus of any kind or species, and any substances, materials, chemicals, pollutants, constituents, wastes or noxious substances regulated by any Environmental Law, except Medical Wastes.

**1.56 “Health Care Laws”** means all Applicable Laws pertaining to health care providers and facilities; federal and state health care program conditions of participation, standards, policies, rules, procedures and other requirements; and accreditation standards of any applicable accrediting organization. Health Care Laws include the following Applicable Laws: the federal (Title XIX of the Social Security Act) and state Medicaid programs and their implementing regulations, the Medicare Program (Title XVIII of the Social Security Act) and its implementing regulations, the federal False Claims Act (31 U.S.C. §§ 3729 *et seq.*), the Federal Health Care Program Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)), the Federal Physician Self-Referral Law (42 U.S.C. § 1395nn), the Federal Administrative False Claims Law (42 U.S.C. § 1320a-7b(a)), the Health Insurance Portability and Accountability Act of 1996 as amended and the HIPAA Privacy Rule, the HIPAA Security Rule and the HIPAA Standards for Transactions and Code Sets (42 U.S.C. § 1320d-1320d-9; 45 C.F.R. Parts 160 and 164) (“**HIPAA**”), the federal Confidentiality of Alcohol and Drug Abuse Patient Records Act (42 U.S.C. § 290ee-3), the Rehabilitation Act, the Americans with Disabilities Act, the Occupational Safety and Health Administration statutes and regulations for blood borne pathogens and workplace risks, and any state and local laws that address the same or similar subject matter. Health Care Laws also include Applicable Laws related to: federal and state health care program billing, cost reporting, revenue reporting, payment and reimbursement; federal and state health care program fraud, abuse, theft or embezzlement; procurement of health care services, human and social services, and other health related services; employee background checks and credentialing of employees; credentialing and licensure of facilities or providers of such services; zoning, maintenance, safety and operations of group homes, residential facilities and day programs, and other building health and safety codes and ordinances; certificate of need laws; state law restrictions on the corporate practice of medicine (or the corporate practice of any other health related profession); eligibility for federal and state health care program contracting, including any requirements limiting contracting to nonprofit or tax exempt entities; patient information and medical record confidentiality, including psychotherapy and mental health records; splitting of health care fees; patient brokering, patient solicitation, patient capping, and/or payment of inducements to recommend or refer, or to arrange for the recommendation or

referral of, patients to health care providers or facilities; standards of care, quality assurance, risk management, utilization review, peer review, and/or mandated reporting of incidents, occurrences, diseases and events; and advertising or marketing of health care services.

**1.57** “**Health Services**” has the meaning set forth in the introductory paragraph to this Agreement.

**1.58** “**HIPAA**” has the meaning set forth in Section 1.56.

**1.59** “**Hospital Facilities**” means the real estate, facilities, fixtures and other assets owned by the District and leased to IRMC for the operation of the Medical Center pursuant to the Lease.

**1.60** “**HSIR**” has the meaning set forth in the introductory paragraph to this Agreement.

**1.61** “**HSR Act**” has the meaning set forth in Section 6.4(b).

**1.62** “**Indebtedness**” means, without duplication, any of the following liabilities: (a) indebtedness for borrowed money (including any principal, premium, accrued and unpaid interest, related expenses, prepayment penalties, commitment and other fees, sale or liquidity participation amounts, reimbursements, indemnities and all other amounts payable in connection therewith); (b) all liabilities evidenced by bonds, debentures, notes, or other similar instruments or debt securities; (c) the outstanding amount of any commitment by which a person assures a creditor against loss (including contingent reimbursement obligations with respect to bankers acceptances, fidelity bonds, surety bonds, performance bonds and letters of creditor), in each case, to the extent drawn; (d) all liabilities to pay the deferred purchase price of property or services (including deferred rent) other than those trade payables incurred in the Ordinary Course of Business; (e) all liabilities arising from cash/book overdrafts; (f) all liabilities under any lease which has been under GAAP recorded as a capital lease; (g) all under conditional sale or other title retention agreements; (h) all liabilities arising out of interest rate and currency swap arrangements and any other arrangements designed to provide protection against fluctuations in interest or currency rates, to the extent payable if terminated; (i) any deferred purchase price liabilities related to past acquisitions (including the maximum amount of any earn-outs); (j) all indebtedness of others guaranteed or secured by any Encumbrance on assets and (k) guarantees of indebtedness of any other person.

**1.63** “**Insurance Policies**” has the meaning set forth in Section 6.17.

**1.64** “**Intellectual Property**” has the meaning set forth in Section 6.27.

**1.65** “**Interim Financial Statements**” has the meaning set forth in Section 6.5(a).

**1.66** “**IRMA**” has the meaning set forth in the introductory paragraph to this Agreement.

**1.67** “**IRMC**” has the meaning set forth in the introductory paragraph to this Agreement.

- 1.68** “**IRMC Board**” means the Board of IRMC.
- 1.69** “**IRMC Closing Documents**” has the meaning set forth in Section 15.2(b).
- 1.70** “**IRMC Entities**” has the meaning set forth in the Recitals.
- 1.71** “**IRMC Financial Statements**” has the meaning set forth in Section 6.5(a).
- 1.72** “**IRMC Leases**” has the meaning set forth in Section 6.14.
- 1.73** “**IRMC Non-Subsidiaries**” has the meaning set forth in the Recitals.
- 1.74** “**IRMC Subsidiaries**” has the meaning set forth in the Recitals.
- 1.75** “**IRMC System**” has the meaning set forth in the Recitals.
- 1.76** “**IRS**” means the Internal Revenue Service.

**1.77** “**Knowledge**”, “**known**”, “**knowingly**”, “**to the knowledge**” or any variant thereof will, when qualifying any representation, warranty or other statement in this Agreement, mean and refers to:

(a) with respect to the IRMC Entities: (i) all matters with respect to which any IRMC Entity or the IRMC Board has received written notice; or (ii) the actual knowledge of the Interim President of IRMC, the Chief Financial Officer of IRMC, the Vice President of Finance of IRMC, the Chief Operating Officer of IRMC, Senior Vice President and President of the IRMA Division of IRMC, Senior Vice President of Business Development of IRMC, Director of Planning & Business Development of IRMC, the Chief Compliance Officer of IRMC, the Vice President of Patient Care Services of IRMC, the General Counsel of IRMC, and the chief executive officers, in title or function, of each of the IRMC Subsidiaries, and such individuals will be deemed to have “Knowledge” of a particular activity, event, fact, circumstance or condition if such Person has actual knowledge of a particular activity, event, fact, circumstance or condition, in each case after due inquiry (including of subordinates) or, if due inquiry has not been made, such knowledge that a prudent Person would be expected to have after due inquiry (including due inquiry of subordinates); or

(b) with respect to CCF: (i) all matters with respect to which CCF or the CCF Board has received written notice; or (ii) the actual knowledge of the Chief Executive Officer of CCF, the Chief Financial Officer of CCF, the General Counsel of CCF, and the Chief Compliance Officer of CCF, and such individuals will be deemed to have “Knowledge” of a particular activity, event, fact, circumstance or condition if such individual has actual knowledge of a particular activity, event, fact, circumstance or condition, in each case after due inquiry (including of subordinates) or, if due inquiry has not been made, such knowledge that a prudent person would be expected to have after due inquiry (including due inquiry of subordinates).

(c) With respect to the District: (i) all matters with respect to which the District or the Board of Trustees of the District has received written notice; (ii) the actual knowledge of the Executive Director of the District, the Chair of the Board of Trustees of the

District, or the outside General Counsel of the District; and such individuals will be deemed to have “Knowledge” of a particular activity, event, fact, circumstance or condition if such individual has actual knowledge of a particular activity, event, fact, circumstance or condition, in each case after due inquiry (including of subordinates) or, if due inquiry has not been made, such knowledge that a prudent person would be expected to have after due inquiry (including due inquiry of subordinates).

**1.78 “Lease”** means 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.

**1.79 “Leased Real Property Improvements”** has the meaning set forth in Section 6.14(e).

**1.80 “Letter of Intent”** has the meaning set forth in the Recitals.

**1.81 “Licenses and Permits”** has the meaning set forth in Section 6.10(a).

**1.82 “Material Adverse Event”** means any event that: (a) is materially adverse to the business, assets, financial condition, results of operations, or prospects of that Party or that Party with its Affiliates, taken as a whole; (b) has a material adverse effect on the Party’s ability to consummate the Combination or to perform its obligations under this Agreement; (c) results in, or could reasonably be expected to result in loss of licensure, accreditation, permits or approvals which are necessary to operate consistent with historic practices; (d) results in, or could reasonably be expected to result in threatened exclusion from a federal or state health care program; (e) results in, or could reasonably be expected to result in loss of tax exemption; or (f) results in, or could reasonably be expected to result in, employee or medical staff attrition at levels materially higher than historic levels, other than as a direct consequence of the execution of this Agreement or the announcement or consummation of the Combination; *provided, however, that* none of the following will be a Material Adverse Event: (i) any change in Applicable Law or GAAP or interpretations thereof (other than those which would have a material adverse effect on the Party’s ability to consummate the Combination or to perform its obligations under this Agreement); (ii) any change in the U.S. economy or impacting the U.S. health care industry generally that does not disproportionately impact the Party or that Party with its Affiliates, taken as a whole; (iii) any change in requirements, reimbursement rates, policies or procedures of third party payors or Accreditation organizations that are generally applicable to hospitals that do not disproportionately impact a Party or that Party with its Affiliates, taken as a whole; (iv) earthquakes, hurricanes or other natural disasters or acts of God; (v) local, regional, national or international political or social conditions, including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack that do not disproportionately impact a Party or that Party with its Affiliates, taken as a whole; (vi) any action taken by a Party to intentionally cause another Party to suffer a Material Adverse Event (which, for the sake of clarity, will not include any actions contemplated or permitted under this Agreement); (vii) changes in financial, banking or securities markets (including any disruption thereof and any decline in the price of any security or any market index) that do not disproportionately impact a Party or that Party with

its Affiliates, taken as a whole; and (viii) matters disclosed in the schedules to this Agreement as of the Execution Date or in any Approved Amended Schedule.

**1.83 “Material Contracts”** means all contracts, leases, and other binding obligations entered into by or on behalf of any one or more of the IRMC Entities that:

(a) contain any non-compete or exclusivity provisions with respect to any line of business or geographic area that restricts the business of any IRMC Entity, or that otherwise restrict the lines of business conducted by any IRMC Entity or the geographic area in which any IRMC Entity may conduct business;

(b) constitute Indebtedness of an IRMC Entity with a principal amount of greater than \$500,000;

(c) constitute a partnership agreement, joint venture agreement or shareholder agreement to which an IRMC Entity is a party or involving any IRMC Entity’s programs or operations;

(d) require any IRMC Entity to dispose of or acquire assets or properties with a fair market value in excess of \$500,000 at the time of such disposition or acquisition;

(e) involves any pending or contemplated merger, consolidation or similar business combination transaction;

(f) are with a physician or an Entity owned by one or more physicians or, to the Knowledge of the IRMC Entities, immediate family members of a physician;

(g) are for employment, indemnity, retention, bonus, severance, change-in-control and employee leases, excluding (i) any agreements entered into in the Ordinary Course of Business with at-will employees and (ii) obligations set forth in the Governing Documents of IRMC Entities;

(h) are with trustees, directors, members, shareholders, presidents, chief executive officers, chief operating officers, treasurers or chief financial officers of an IRMC Entity, excluding obligations set forth in the Governing Documents of IRMC Entities;

(i) are Payment Program contracts;

(j) are insurance policies, trust agreements and other related agreements, including stop-loss and self-insurance arrangements;

(k) are corporate integrity agreements, settlement and other similar agreements with Government to which an IRMC Entity is a party;

(l) are collective bargaining agreements; or

(m) obligate an IRMC Entity to make aggregate annual expenditures (other than principal and/or interest payments or the deposit of other reserves with respect to

Indebtedness) in excess of \$500,000 and are not cancelable within ninety (90) days without material penalty to any IRMC Entity.

**1.84 “Medical Center”** means the licensed acute care hospital owned and operated by IRMC located at 1000 36th St., Vero Beach, FL 32960 and commonly referred to as Indian River Medical Center.

**1.85 “Medical Waste”** means any substance, pollutant, material, or contaminant listed or regulated under the MOWTA.

**1.86 “Medical Waste Laws”** means the following, including regulations promulgated and orders issued thereunder: the MOWTA; the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651 *et seq.* (with respect to medical waste) and any other Applicable Laws insofar as they regulate Medical Waste.

**1.87 “MOWTA”** means the Medical Waste Tracking Act of 1988, 42 U.S.C. §§ 6992, *et seq.*

**1.88 “Ordinary Course of Business”** means conduct that is consistent with the past practices of a Party, taken in the ordinary course of the normal operations of such Party and is consistent with Applicable Law, GAAP (if applicable) and the financial and other policies of the Party (as applied by the Party consistent with past practices).

**1.89 “Owned Real Property”** has the meaning set forth in Section 6.13(a).

**1.90 “Parties”** has the meaning set forth in the introductory paragraph of this Agreement.

**1.91 “Partners Agreement”** means that certain Agreement for Operating and Funding of the Partners in Women’s Health Program between the District and IRMC dated the 15th of October, 2015.

**1.92 “Payment Programs”** has the meaning set forth in Section 6.21.

**1.93 “Permitted Encumbrances”** means (a) encumbrances for Taxes not yet due and payable or being diligently contested in good faith and for which appropriate reserves have been established in accordance with GAAP (provided that Permitted Encumbrances will not apply to omitted or reassessed Taxes imposed due to incorrect, false or misleading real estate tax exemption applications or annual exemption certifications filed pursuant to Applicable Law); (b) liens for inchoate mechanics’ and materialmen’s liens for construction in progress and workmen’s, repairmen’s, warehousemen’s and carriers’ liens arising in the Ordinary Course of Business; (c) easements, restrictive covenants, rights of way and other similar restrictions of record that do not impair in any material respect the value of the assets or the continued conduct of the business of an IRMC Entity or its continued use of its assets in the manner currently used; (d) zoning, building and other similar restrictions that do not impair in any material respect the value the asset or the continued conduct of the business of an IRMC Entity or its continued use of its assets in the manner currently used; (e) encumbrances, encroachments and other imperfections of title, licenses or encumbrances, if any, of record that do not impair in any

material respect the value of the asset or the continued conduct of the business of an IRMC Entity or its continued use of its assets in the manner currently used; (f) encumbrances arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the Ordinary Course of Business; and (g) in the case of leased property, all matters, whether or not of record, affecting the title of the lessor (and any underlying lessor) of the leased property that do not impair in any material respect the value of its assets or the continued conduct of the business of an IRMC Entity or its continued use of its assets in the manner currently used.

- 1.94 “**Person**” means a natural person or an Entity.
- 1.95 “**Real Property Improvements**” has the meaning set forth in Section 6.13(a)(vi).
- 1.96 “**Required Service**” has the meaning set forth in Section 4.5.
- 1.97 “**Returns**” has the meaning set forth in Section 6.18.
- 1.98 “**Specific Government Approvals**” has the meaning set forth in Section 12.1(b).
- 1.99 “**Taxes**” means all federal, state, county, local and other taxes of every kind.
- 1.100 “**Unaudited Financial Statements**” has the meaning set forth in Section 6.5(a).
- 1.101 “**VRA**” has the meaning set forth in the introductory paragraph to this Agreement.
- 1.102 “**WARN**” has the meaning set forth in Section 6.19(a).

## ARTICLE 2 IMPLEMENTATION OF MEMBER SUBSTITUTION

2.1 **Amendment of Governing Documents**. On or before the Closing Date the Parties will take the following actions:

(a) **IRMC Governing Documents**. IRMC will amend its Governing Documents to be effective on the Closing Date in substantially the form attached as Exhibit A (the “**Amended IRMC Governing Documents**”) to identify Cleveland Clinic Florida as its sole corporate member and to reflect the following:

(i) **IRMC Board**.

(A) The IRMC Board initially shall be comprised of seventeen individuals, and such individuals serving effective as of the Closing shall be:

(1) Three individuals who reside in Indian River County selected by the IRMC Board as comprised prior to the Closing. The names of such individuals will be provided in writing by IRMC to CCF and the District at least ten Business Days prior to the Closing Date.

(2) The Chair of Foundation serving *ex officio*. The name of such individual shall be provided in writing by IRMC to CCF and the District at least ten Business Days prior to the Closing Date.

(3) For so long as the Amended and Restated Lease is in effect, the individual who is the Chair of the District Board serving *ex officio*. The name of such individual shall be provided in writing by the District Board to CCF and IRMC at least ten business days prior to the Closing Date.

(4) An individual (the “**Community Representative**”) who resides in Indian River County and who is not a District Trustee but who, during the Commitment Period, is selected by CCF from a slate of nominees approved by vote of a majority of the members of the District Board. The Community Representative will not be delegated authority to act on behalf of the District, will not be required to report to the District, and the District will not direct the actions of the Community Representative, so that at all times the Community Representative will remain independent of the District. The slate of names shall be provided in writing by the District Board to CCF and IRMC at least fifteen Business Days prior to the Closing Date, and CCF shall provide the name of its selected individual no later than five Business Days following receipt thereof.

(5) Two individuals who are physicians on the medical staff of IRMC selected by the IRMC Board as comprised prior to the Closing and approved by CCF. The names of such individuals will be provided in writing by IRMC to CCF and the District at least fifteen Business Days prior to the Closing Date, and CCF shall provide its approval no later than five Business Days following receipt thereof.

(6) Nine individuals selected by CCF. The names of such individuals will be provided in writing by CCF to IRMC and the District at least ten Business Days prior to the Closing Date.

(B) Notwithstanding anything contained in this Agreement to the contrary, following the initial appointment of the members of the IRMC Board as set forth above and following the Closing, members of the IRMC Board (other than *ex officio* members) may be removed by CCF.

(C) Vacancies in the non-*ex officio* members of the IRMC Board occurring following the Closing, regardless of the manner in which such vacancies were created, shall be filled as follows:

(1) During the Commitment Period, vacancies in the Community Representative shall be filled as provided in and subject to Section 2.1(a)(i)(A)(4); and

(2) All other vacancies shall be filled by CCF.

(ii) Reserved Powers. Cleveland Clinic Florida shall have the following reserved powers with respect to IRMC:



(A) The power unilaterally to amend the IRMC Governing Documents, provided that such amendments do not conflict with, reduce, modify or in any way adversely impact the Fundamental Commitments or the manner of election of the members of the IRMC Board as described in Sections 2.1(a)(i)(A)(3) and 2.1(a)(i)(A)(4);

(B) The power to approve/ratify IRMC operating budgets, capital budgets and strategic plans;

(C) The power to approve all plans of merger, consolidation or voluntary dissolution;

(D) The power to approve the sale, lease, exchange, mortgage, pledge or other dispositions of assets of IRMC in excess of \$[●];<sup>4</sup>

(E) The power to appoint and remove officers; and

(F) The power to approve the creation of controlled or owned subsidiary or Affiliate.

(b) Cleveland Clinic Florida. CCF will cause Cleveland Clinic Florida to amend its Governing Documents to be effective on the Closing Date in substantially the form attached as Exhibit B (the “**Amended Cleveland Clinic Florida Governing Documents**”) to reflect that the IRMC Board Chair shall serve as an *ex officio* voting member of the Cleveland Clinic Florida Board.

(c) IRMC Subsidiaries. The IRMC Subsidiaries will amend their respective Governing Documents to be effective on the Closing Date in the respective forms attached as Exhibit C (the “**Amended IRMC Subsidiaries Governing Documents**”) to reflect that:

(i) Members of the Board of each IRMC Subsidiary shall be appointed in the same manner following the Closing as they were prior to the Closing;

(ii) IRMC shall have the following reserved powers with respect to each IRMC Subsidiary (except as otherwise noted):

(A) With respect to all IRMC Subsidiaries other than Foundation, the power unilaterally to amend the IRMC Subsidiary’s Governing Documents, provided that such amendments do not conflict with, reduce, modify or in any way adversely impact the any of the Fundamental Commitments;

(B) The power to approve/ratify the IRMC Subsidiary’s operating budgets, capital budgets and strategic plans;

(C) The power to approve all plans of merger, consolidation or voluntary dissolution;

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4. Note to draft: CCF proposal materials do not reference a specific dollar amount.

(D) The power to approve the sale, lease, exchange, mortgage, pledge or other dispositions of assets of the IRMC Subsidiary in excess of \$[●];<sup>5</sup> and

(E) The power to approve the creation of controlled or owned subsidiary or Affiliate.

(iii) With respect to Foundation, its Governing Documents:

(A) Shall not be amended in a manner in conflict with Section 4.7; and

(B) Shall provide that any amendment thereto may be proposed by either the Foundation Board or IRMC, but such amendment shall require the approval of both the Foundation Board and IRMC.

(d) IRMC Non-Subsidiaries. The IRMC Non-Subsidiaries will amend their respective Governing Documents to be effective on the Closing Date in the respective forms attached as Exhibit D (the “**Amended IRMC Non-Subsidiaries Governing Documents**”) to reflect that: [●]

**2.2 Assets.** All assets, including all cash, cash equivalents and other assets (tangible, real or personal), owned or held in the name of any IRMC Entity immediately prior to the Closing will continue to be owned or held by such IRMC Entity immediately after the Closing, except as otherwise provided in this Agreement and specifically recognizing that the Premises (as defined in the Amended and Restated Lease) are leased and not owned by IRMC.

**2.3 Liabilities.** Except for the obligations of CCF under this Agreement and as otherwise agreed to in writing by CCF, all liabilities, Indebtedness, commitments and other financial and operational obligations, whether known or unknown, fixed or contingent, recorded or unrecorded, of each IRMC Entity immediately before the Closing will continue to be the liabilities, Indebtedness, commitments and obligations of such IRMC Entity immediately after the Closing.

### **ARTICLE 3 COMMITMENT INTEGRITY COMMITTEE**

#### **3.1 Composition of Commitment Integrity Committee; Independence.**

(a) Composition. The Commitment Integrity Committee will initially consist of the four individuals, two of whom are selected by the IRMC Board and two of whom are selected by majority vote of the District Board (but no more than one member of the Commitment Integrity Committee shall be a District Trustee in order to ensure that the Commitment Integrity Committee is not subject to Chapter 119, Florida Statutes) whose names are set forth on Schedule 3.1(a) hereto, each of whom shall serve until they elect to resign or are

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5. Note to draft: CCF proposal materials do not reference a specific dollar amount.

unable to serve due to death or incapacity. Vacancies in the members of the Commitment Integrity Committee shall be filled as follows:

(i) If the vacancy is with respect to a member selected by the IRMC Board, then the remaining member selected by the IRMC Board shall select an individual to fill the vacancy.

(ii) If the vacancy is with respect to a member selected by the District Board, then the District Board shall select by majority vote an individual to fill the vacancy on the Commitment Integrity Committee, but no more than one District Trustee may serve on the Commitment Integrity Committee.

(b) Independence. Each member of the Commitment Integrity Committee shall serve as an independent member of such committee, and not as an agent or representative of any IRMC Entity or the District. Such members shall act independently and objectively with respect to the enforcement of the Fundamental Commitments.

**3.2 Effect of Conflicts**. Any individual serving on the Commitment Integrity Committee must immediately notify the other members of the Commitment Integrity Committee in writing in the event such individual (or a member of his or her immediate family) enters into any transaction or financial arrangement with CCF or any of its Affiliates that would create any actual or potential conflict of interest between such individual's duties and obligations to exercise authority and objectivity as a member of the Commitment Integrity Committee and such individual's interests, duties and obligations (or the interests, duties and obligations of an immediate family member) under or in connection with such transaction, arrangement or relationship with CCF or its Affiliates. Upon receipt of any written notice of a member's actual or potential conflict of interest as described above, the remaining members of the Commitment Integrity Committee may elect by majority vote to remove the member having the actual or potential conflict of interest from the Commitment Integrity Committee, and another qualified individual will be selected to fill the vacancy created thereby under the procedures set forth in Section 3.1(a).

**3.3 Voting**. Any decision made or action taken by the Commitment Integrity Committee shall require the affirmative vote of at least three members of the Commitment Integrity Committee.

**3.4 Enforcement Actions**.

(a) If, at any time after the Closing, the Commitment Integrity Committee determines that CCF has breached any of its obligations under Sections 4.2, 4.4, 4.5, 4.6 and 4.7 of this Agreement (the "**Fundamental Commitments**"), then the Commitment Integrity Committee shall provide written notice thereof to CCF, the IRMC Board and the District, describing in reasonable detail the nature of the alleged breach and other information pertinent thereto (a "**Breach Notice**"). Upon receipt of a Breach Notice, representatives of CCF and the members of the Commitment Integrity Committee (along with their respective advisors) shall meet on a regular basis to discuss and resolve the alleged breach identified in the Breach Notice. If CCF and the Commitment Integrity Committee are unable to resolve the alleged breach by

CCF identified in the Breach Notice to the reasonable satisfaction of the Commitment Integrity Committee within sixty (60) days of the delivery of the Breach Notice, then the Commitment Integrity Committee may bring and pursue an Enforcement Action on behalf of, and in the name of, IRMC with respect to any unresolved alleged breach. The Enforcement Action shall be conducted pursuant to the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association before a single arbitrator selected by agreement of CCF and the Commitment Integrity Committee from a panel provided by the American Arbitration Association; provided, however, if CCF and the Commitment Integrity Committee cannot agree on a single arbitrator, then each shall select an arbitrator from the panel provided by the American Arbitration Association and the two arbitrators so selected shall select an arbitrator from such panel who shall be the single arbitrator for the Enforcement Action. The Enforcement Action shall be held at a mutually agreed location in Orlando, Florida. The decision of such arbitrator shall be issued in writing and shall be binding upon the Parties and the Commitment Integrity Committee. The Commitment Integrity Committee shall have the sole and exclusive right and authority to make any and all decisions with respect to the enforcement of Fundamental Commitments and the prosecution of any Enforcement Action, including the decision to engage or dismiss legal counsel representing the Commitment Integrity Committee in connection therewith and decisions to enter into settlement negotiations and to make and accept settlement offers with respect thereto. CCF acknowledges and agrees that the Commitment Integrity Committee has standing to assert and bring an Enforcement Action on behalf of IRMC; provided, however, that the Commitment Integrity Committee shall only be authorized to seek equitable relief on behalf of IRMC in the form of an injunction or specific performance and shall not be authorized to seek money damages from CCF (other than specific performance of an obligation involving the payment of money) with respect thereto.

(b) The agreement to arbitrate set forth in Section 3.4(a) shall be specifically enforceable. CCF or the Commitment Integrity Committee may apply to a court for interim or conservatory relief, including without limitation a proceeding to compel arbitration and to enforce the arbitration decision/judgment on the award rendered by the arbitrator. The State or Federal Courts serving Indian River County, Florida shall have jurisdiction over the foregoing, and venue shall be in Indian River County, Florida.

**3.5 Expenses.** Unless otherwise provided in this Article 3, IRMC shall be responsible for paying the reasonable, regular and ongoing expenses incurred by the Commitment Integrity Committee; however, in the event that the Commitment Integrity Committee incurs expenses following the submission of a Breach Notice to enforce the Fundamental Commitments, CCF shall be fully responsible for the reasonable expenses incurred by the Commitment Integrity Committee in connection therewith. CCF agrees to advance to the Commitment Integrity Committee funds as and when reasonably required by the Commitment Integrity Committee following the submission of a Breach Notice to pursue the enforcement of the Fundamental Commitments, subject to a limit for all advanced and/or reimbursed expenses in connection with any single Enforcement Action of \$500,000 with respect to an Enforcement Action commenced prior to the fifth anniversary of the Closing Date, and increasing by \$50,000 per year thereafter. Upon each written request for funding of such expenses delivered by the Commitment Integrity Committee (which shall be supported by invoices or other written documentation of such reasonable expenses), and subject to the aforementioned limitation, CCF shall either deposit the requested funds into a segregated bank account under the control of the

Commitment Integrity Committee within ten Business Days of such request or directly pay such expenses on behalf of the Commitment Integrity Committee as and when due. In the event that the Commitment Integrity Committee does not prevail in an Enforcement Action, then any funds advanced or paid by CCF for the expenses of the Commitment Integrity Committee in connection therewith will be credited against and reduce any unfunded portion of the Fundamental Commitments. In the event that the Commitment Integrity Committee prevails in an Enforcement Action, then any funds advanced or paid by CCF for the expenses of the Commitment Integrity Committee in connection therewith will not be credited against or reduce the Fundamental Commitments.

**3.6 Access to Information.** The Commitment Integrity Committee shall be afforded reasonable access to all information that is reasonably necessary for it to carry out its duties and responsibilities under this Article 3, and CCF shall provide or make available such information to the Commitment Integrity Committee as is reasonably requested by it to the extent such information is available or reasonably accessible to such party without undue cost or burden. Neither CCF nor its officers, directors or other agents will be deemed in violation of any agreement protecting the confidentiality of information as a result of providing information to the Commitment Integrity Committee for proper purposes under this Article 3. Notwithstanding the foregoing, all persons serving on the Commitment Integrity Committee will be subject to the same restrictions on the use and disclosure of confidential information regarding CCF and IRMC that apply to the members of the IRMC Board and will enter into written agreements with respect thereto in the same form as required for members of the IRMC Board; provided, however, that such agreements do not restrict the use or disclosure of any such information as may be necessary in connection with an Enforcement Action or as permitted by Applicable Law.

**3.7 Termination.** Notwithstanding any provision of this Agreement to the contrary, the Commitment Integrity Committee shall be terminated and will have no authority hereunder after the end of the Commitment Period; provided, however, that the Commitment Integrity Committee will remain in place until final resolution of all matters set forth in any and all Breach Notices delivered prior to the end of the Commitment Period, including completion of any resulting Enforcement Actions related thereto.

## **ARTICLE 4 FINANCIAL AND OTHER COMMITMENTS**

**4.1 Financial Commitment.** In furtherance of sustaining and enhancing the IRMC System's status as part of the Delivery System, meeting the likely future challenges facing the IRMC System, CCF acknowledges the need and desirability of making a substantial financial commitment to ensure that appropriate ongoing capital, operating expense and strategic investments are made to support the capital, programmatic, clinical, and market development needs of the IRMC System in the short term and long term.

**4.2 Uses of Capital; Budgeting.**

(a) Uses. During the Commitment Period, CCF will provide capital to and for the benefit of the IRMC System pursuant to capital plan and for capital projects approved by the

IRMC Board in an aggregate amount of not less than \$250,000,000, which capital plan shall designate uses for such funds in the areas of:

- (i) Routine maintenance and capital investment as provided for in Section 4.3;
- (ii) Non-routine capital investment in development, improvement and expansion of IRMC System facilities;
- (iii) Capital investment in information technology;
- (iv) Outpatient surgery center development; and
- (v) Strategic capital investments (*e.g.*, acquisitions of businesses).

The timing, allocation and actual uses of capital as set forth above (but not the aggregate amount of the commitment), shall be determined and may be modified by CCF's in consultation with the IRMC Board.

(b) Budgeting. Funds for satisfaction of the capital commitments set forth in this Section 4.2 will be established in the CCF capital budgeting system as specific IRMC System capital projects and will be used only for such IRMC System capital commitments.

**4.3 Routine Capital for Hospital Facilities**. As part of the foregoing capital commitments, CCF will provide capital for routine maintenance and capital investment for the Hospital Facilities pursuant to the terms and conditions of the Amended and Restated Lease.

**4.4 IRMC Indebtedness**. During the Commitment Period, in the event that an IRMC Entity is in default with respect to any Indebtedness set forth on the IRMC Financial Statements, then CCF shall provide to, or arrange for the provision to, the applicable IRMC Entity such funds and such financial and other support as is reasonably necessary to cure such default.

**4.5 Service Line Maintenance**. During the Commitment Period, CCF will continue to maintain and operate the following patient care services at IRMC (each a "**Required Service**"):

- (a) Maternity care (labor, delivery and obstetrics), in-patient well baby care/pediatrics and gynecology services;
- (b) Behavioral health/mental health services;
- (c) Inpatient and outpatient cardiovascular services as provided by the Welsh Heart Center;
- (d) Inpatient and outpatient cancer care services as provided by the Scully-Welsh Cancer Center; and
- (e) Gastroenterology services as provided by the Scully Endoscopy Center.

Notwithstanding the foregoing, in the event another healthcare system or hospital operates a Required Service at a comparable level to IRMC at a healthcare facility or hospital located within the greater of (i) Indian River County, Florida or (ii) a radius of twenty-five miles from the Medical Center, then CCF may discontinue IRMC's provision of such Required Service after meeting with the District Board and thereafter providing a minimum of ninety (90) days' prior written notice to the Commitment Integrity Committee, the District Board and members of the public of the discontinuance of such Required Service.

**4.6 Prohibition on Sale or Transfer.** During the Commitment Period, CCF shall not cause or permit to occur a Change of Control with respect to IRMC.

**4.7 Foundation.** During the Commitment Period, CCF will not cause or permit to occur an amendment to the Governing Documents of Foundation so as to change its statement of purpose. Specifically, Foundation's primary mission and purpose will continue to be:

To develop a sense of community purpose with the goal of stimulating contributions to be used to assist Indian River Memorial Hospital, Inc. in the accomplishment of Foundation's stated mission as follows:

Foundation, an affiliate of Indian River Memorial Hospital, is a not-for-profit, philanthropic organization whose primary mission is to generate contributions to supplement the capital requirements of the hospital. Foundation is committed to developing a sense of community purpose in support of the hospital's mission, which is to provide excellent, cost competitive healthcare services to our community.

The primary focus of Foundation's efforts shall be to supplement the capital requirements of Indian River Memorial Hospital, Inc.; however, other financial needs of Indian River Memorial Hospital, Inc. may be addressed by Foundation.

As such, Foundation's assets (both current and future) will be dedicated to supporting IRMC and used for supporting activities and projects of IRMC in Indian River County.

## **ARTICLE 5 OPERATIONAL COVENANTS**

**5.1 Medical Staff Matters.** After the Closing, the medical staff of IRMC will continue as an independent medical staff organization, and will continue to be governed by its own bylaws, rules and regulations, as amended from time to time.

**5.2 Branding.** CCF uses a "master brand" naming architecture, which leads with the Cleveland Clinic name to differentiate the organization, reinforce loyalty, increase recognition and awareness, and create an emotional connection with patients and caregivers. The brand architecture reflects "one Cleveland Clinic," and provides a strong consistent identity for facilities, institutes and programs. Accordingly, branding for IRMC will be the same as branding for all regional facilities affiliated with CCF.

### **5.3 Employee Matters.**

(a) CCF anticipates that all employees of the IRMC Entities will remain employees of the IRMC Entities after giving effect to the Closing, subject to the human resources policies of the IRMC Entities and with the same compensation and benefits as were in place immediately prior to the Closing, and, where applicable, subject to the terms and conditions of any collective bargaining agreement then in effect. Notwithstanding anything to the contrary, neither IRMC nor CCF intend to create a joint employer relationship, and nothing herein shall constitute a guaranty of employment or a contract of employment enforceable against CCF or an IRMC Entity by any employee of an IRMC Entity following the Closing, and no such employee shall be a third party beneficiary in any manner under this Agreement. Moreover, CCF may take such steps following the Closing to align the IRMC Entities' compensation and benefits with CCF's evolving compensation and benefits strategy. In so doing, however, CCF will recognize prior service credit with the IRMC System for purposes of service awards and paid time off accrual, and would evaluate recognizing prior service credit for purposes of other Benefit Plans. Lastly, CCF will impose no greater or additional employee welfare benefit plan restrictions during the current plan year in which the Closing occurs; provided, however, that CCF will not be prohibited from making employee welfare benefit plan changes in any subsequent plan year.

(b) Consistent with CCF's expectation that all employees of the IRMC Entities will remain employees of the IRMC Entities after giving effect to the Closing, each IRMC Entity, as applicable, will honor all written severance agreements and written severance policies disclosed to CCF and in effect on the Execution Date between an IRMC Entity and its employees; provided, however, that the foregoing shall not apply to: (i) any subsequent written severance agreement entered into with the consent of the employee; and (ii) any subsequent severance policy implemented with respect to an IRMC Entity that provides for the same or greater severance benefits.

(c) CCF will not interfere with any IRMC Entity's obligation to honor the terms and conditions of any existing collective bargaining agreement applicable to such IRMC Entity.

## **ARTICLE 6 REPRESENTATIONS AND WARRANTIES OF THE IRMC ENTITIES**

IRMC hereby represents and warrants, on its behalf and on behalf of the IRMC Entities:

### **6.1 Due Organization; Good Standing; Power.**

(a) Each of IRMC, Foundation, Health Services and HSIR is a Florida not-for-profit corporation, exempt from federal income taxation under Section 501(a) of the Code, as an organization described in Section 501(c)(3) of the Code and is not a "private foundation" within the meaning of Section 509(a) of the Code. Each of VRA, EPVB and IRMA is a Florida limited liability company.

(b) Each of the IRMC Entities is duly formed, validly existing and in good standing or continuing under the laws of the state of Florida, and has the corporate power and



authority to own, operate or hold under lease its properties and assets and to carry on its business and operations as presently conducted. Each of the IRMC Entities has registered with the proper Government all assumed names under which it operates its businesses and continuously maintained all such filings in good standing. Each IRMC Entity is qualified to engage in business activities in each jurisdiction in which its activities or assets requires such qualification, except for such failures to be so qualified, licensed or in good standing that, individually or in the aggregate, have not resulted and would not reasonably be expected to result in a Material Adverse Event.

**6.2 Affiliates and Subsidiaries.** Exhibit E sets forth an accurate and complete list of all of the IRMC Entities, together with an accurate description of all of the issued and outstanding membership or other equity interests in the IRMC Entities and the owners thereof. All of the issued and outstanding equity interests of each IRMC Entity, if any, have been validly issued, are fully-paid and non-assessable, and are owned beneficially and of record by IRMC or another IRMC Entity as reflected on Exhibit E, free and clear of all Encumbrances other than Permitted Encumbrances. There are no outstanding subscriptions, options, warrants, convertible securities, rights (including preemptive rights), calls or other agreements or commitments relating to any issued or unissued membership interests or other equity interests of any IRMC Entity. No IRMC Entity is party to any agreement granting, or has granted, any equity appreciation, participation, phantom equity or similar rights. Except as set forth on Schedule 6.2, there are no voting trusts, voting agreements, proxies, stockholder agreements or other agreements that may affect the voting or transfer of any membership interests or other equity securities of any IRMC Entity.

**6.3 Corporate Authorization.**

(a) Each IRMC Entity has the full corporate power and authority to enter into and to perform its obligations under this Agreement.

(b) The execution, delivery and performance of this Agreement by each IRMC Entity has been duly and properly authorized by all necessary corporate action in accordance with its Governing Documents.

(c) This Agreement constitutes the valid and legally binding obligation of each IRMC Entity, enforceable against it in accordance with its terms, except as enforceability may be limited by (i) general principles of equity, regardless of whether enforcement is sought in a proceeding in equity or at law and (ii) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application now or hereafter in effect relating to or affecting the enforcement of creditors' rights generally (collectively, the "**Bankruptcy and Equity Exception**").

**6.4 No Violation; Approvals.**

(a) The execution, delivery and performance of this Agreement will not result in the creation of any Encumbrance of any kind other than Permitted Encumbrances or the termination or acceleration of any Indebtedness or other obligation of any IRMC Entity, and, except to the extent specified on Schedule 6.4(b), is not prohibited by, does not violate or

conflict with any provision of, and does not constitute a default under or breach of any Material Contract, indenture, mortgage, material permit or license, approval or other commitment to which any IRMC Entity is a party or is subject or by which any such entity is bound, or any Applicable Law.

(b) Assuming the truth and accuracy of the representations and warranties of CCF and the District set forth in this Agreement and in reliance thereon, except (i) to the extent specified on Schedule 6.4(b), (ii) for filings required pursuant to the Hart-Scott-Rodino Antitrust Improvements Act (“**HSR Act**”) and notice to the Florida Attorney General and (iii) and those the failure of which to obtain or make would not prevent or materially delay the Closing, no approval, authorization, registration, consent, order, filing or other action that has not occurred or been obtained with or from any person, including any Government, is required for the execution and delivery by IRMC of this Agreement or the consummation by the IRMC Entities of the Contemplated Transactions.

## **6.5 Financial Statements.**

(a) Schedule 6.5(a) contains the (i) audited consolidated financial statements of the IRMC Entities for the years ended [●], 2015, 2016 and 2017 (collectively, the “**Audited Financial Statements**”) and (ii) unaudited financial statements of the IRMC Entities for the interim period from [●], 2017, through the most recent month end date for which financial statements were available before the Execution Date (collectively, the “**Unaudited Financial Statements**”). From the Execution Date to the Closing Date, by the fifteenth Business Day of the following month, IRMC will provide CCF with monthly unaudited financial statements of the IRMC Entities for the immediately preceding month (the “**Interim Financial Statements**,” and together with the Audited Financial Statements and the Unaudited Financial Statements, the “**IRMC Financial Statements**”).

(b) The IRMC Financial Statements are (i) true and correct and present fairly the financial position of the IRMC Entities, respectively, and the results of the respective operations of the IRMC Entities at the dates and for the periods indicated and (ii) are in conformity with GAAP, applied consistently for the periods specified, including the consistent use of assumptions, practices, procedures and terminology, except that the Unaudited Financial Statements and the Interim Financial Statements need not contain any of the footnotes or other year-end adjustments required to comply with GAAP.

(c) From and after [●], 2017, the IRMC Entities have not made any changes to their accounting methods or practices used to:

- (i) Establish reserves on any patient and notes and accounts receivable;
- (ii) Establish estimates of any third party settlements;
- (iii) Determine the value of any other accounts that require subjective determinations; and

(iv) Establish malpractice, general liability or other self-insurance reserves, including claims incurred but not reported.

(d) The IRMC Entities have no material liabilities or obligations of any kind, whether contingent or absolute, direct or indirect, or matured or unmatured, that are not shown or provided for in the IRMC Financial Statements, other than (i) claims covered by insurance and any individual liability or obligation of less than \$500,000, provided such liabilities and obligations in the aggregate do not exceed \$2,500,000 or (ii) liabilities arising in the Ordinary Course of Business that are reflected on the Interim Financial Statements or in approved IRMC budgets and disclosed to CCF.

(e) The IRMC Financial Statements accurately reflect donor-restricted funds or assets of the IRMC Entities.

(f) No IRMC Entity has taken, or caused or permitted to be taken, any action that would change the legal or beneficial ownership status of the accounts in which funds of or attributable to employee pension benefit plans of all IRMC Entities are invested or otherwise held.

**6.6 Accounts Receivable.** All accounts receivable of the IRMC Entities reflected on the IRMC Financial Statements represent and constitute bona fide indebtedness owing to the IRMC Entities for services actually performed or for goods or supplies actually provided in the amounts indicated on the IRMC Financial Statements with no known set offs, deductions, compromises, or reductions, other than reasonable allowances for bad debts and contractual allowances in an amount consistent with historical practices of the IRMC Entities and that were taken into consideration in the preparation of the IRMC Financial Statements. IRMC has provided or made available to CCF an aging report of all such accounts receivable and a schedule of all accounts receivable, whether recorded or unrecorded, that have been assigned to collection agencies or are otherwise held or assigned for collection.

**6.7 Interim Changes.** Except for matters expressly permitted or authorized by this Agreement or except as set forth on Schedule 6.7, there has not been since [●], 2017:

- (a) Any Material Adverse Event with respect to the IRMC Entities;
- (b) Any disposition by the IRMC Entities of any property, rights or other assets owned by or employed in the operation of the IRMC Entities, except for dispositions in the Ordinary Course of Business;
- (c) Any amendment of the Governing Documents of IRMC Entities;
- (d) Any change in the Boards of the IRMC Entities other than the expiration of terms or filling of vacancies in the Ordinary Course of Business consistent with the applicable IRMC Entity's Governing Documents;
- (e) Any pending or threatened labor dispute, strike or work stoppage;

(f) Any material damage, destruction or other casualty loss affecting the tangible assets of the IRMC Entities not covered by insurance; or

(g) Any adoption or amendment of any bonus, profit sharing, incentive, retention or severance agreement or arrangement, or any Benefit Plan, involving any officer, director or employee of the IRMC Entities.

**6.8 Material Contracts.** IRMC has delivered or made available to CCF or its legal counsel true and complete copies of all Material Contracts and a narrative description of the material terms of any unwritten Material Contracts. Each Material Contract constitutes the complete agreement and understanding among the parties thereto regarding the subject matter thereof. Each Material Contract has been duly authorized and executed by the relevant IRMC Entity, and to the Knowledge of the IRMC Entities, the other parties thereto. No IRMC Entity is in breach or default under any material term or provision of any Material Contract to which it is a party or by which it is bound, nor to the Knowledge of the IRMC Entities is any other party thereto in breach or default thereunder. All such Material Contracts are in full force and effect and are valid and enforceable obligations of the IRMC Entities that are parties thereto and the other parties thereto except as limited by the Bankruptcy and Equity Exception. Except as set forth on Schedule 6.8, no Material Contract would be breached or contains obligations that could be accelerated or give rise to payment penalties upon consummation of the Contemplated Transactions. No event has occurred or fact, circumstance or condition exists that, to the IRMC Entities' Knowledge, with or without notice or the lapse of time, or the happening of any further event or existence of any future fact, circumstance or condition, would become a default by any IRMC Entity under any Material Contract. No party to any Material Contract has repudiated, terminated or given written notice of its intent not to renew such Material Contract. There are no renegotiations or to the Knowledge of the IRMC Entities attempts to renegotiate or outstanding rights to negotiate any amount to be paid or payable to or by any IRMC Entity under any Material Contract, and no person or entity has made a written demand for such renegotiation. No IRMC Entity has released or waived any of its rights under any Material Contract.

**6.9 Legal Proceedings.** None of the IRMC Entities is a defendant in, or, to the Knowledge of the IRMC Entities, has been threatened with any action, suit, proceeding, complaint, charge, hearing or arbitration, or any investigation by any Government that: (a) would impair the ability of any IRMC Entity to perform its obligations hereunder; (b) would impair the ability of any IRMC Entity to conduct its businesses and operations as presently conducted; (c) would have or result in, or would reasonably be expected to have or result in, a Material Adverse Event; or (d) is not covered by insurance or for which an insurer has denied coverage. IRMC has delivered or made available to CCF descriptions of all current, and to the Knowledge of the IRMC Entities, threatened, actions, suits, proceedings, complaints, charges, hearings and arbitrations, and any investigation by any Government in which an IRMC Entity is a defendant or of which an IRMC Entity is subject.

**6.10 Licenses and Permits.**

(a) Each of the IRMC Entities holds and is in material compliance with all Government licenses, permits, certificates, consents and approvals as are necessary to run its operations as currently operated or currently contemplated by it to be operated (the "**Licenses**

**and Permits**”). The Licenses and Permits are current, unrestricted and valid. True and complete copies of all Licenses and Permits have been provided or made available to CCF.

(b) There are no pending or, to the Knowledge of the IRMC Entities, threatened proceedings that are reasonably likely to result in the revocation, termination, suspension or material limitation of material Licenses and Permits.

(c) Except as set forth Schedule 6.10(c), no statement of deficiencies, survey report, inspection report, notice of audit, audit results, complaint or other notice of noncompliance with the requirements, standards or other conditions or any revocation, termination, suspension or limitation of any of the material Licenses and Permits has been issued or received that has not been corrected or for which a plan of correction has not been timely submitted and accepted by the relevant authority and none are, to the Knowledge of the IRMC Entities, threatened for which any actual or potential payment or other obligation exists, nor do the IRMC Entities have Knowledge of any basis for any such action.

#### **6.11 No Material Omissions.**

(a) To the Knowledge of the IRMC Entities, the IRMC Entities have responded accurately in all material respects to all requests for information and documentation made by CCF in connection with its due diligence review of the business, operations, assets and liabilities of the IRMC Entities. To the Knowledge of the IRMC Entities, the IRMC Entities have not omitted any material information relating to the businesses, operations, assets or liabilities of the IRMC Entities in its responses to CCF’s requests. Since the delivery of such responses to CCF, none of the IRMC Entities has received or failed to disclose any information that would render untrue or misleading in any material respect any information previously disclosed to CCF in response to its requests for information.

(b) The representations and warranties of the IRMC Entities contained in this Agreement, and each Exhibit, Schedule, certificate or other document delivered at Closing by the IRMC Entities pursuant to this Agreement, are accurate, correct and complete in all material respects and do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements and information contained therein not misleading.

#### **6.12 Compliance with Law.**

(a) Each of the IRMC Entities is in material compliance with all Applicable Law (except Environmental Law, which is exclusively addressed in Section 6.13(b) herein), including all Health Care Laws.

(b) No IRMC Entity has:

(i) knowingly or willfully offered, paid, solicited or received any remuneration (including any kickback, bribe or rebate, but excluding any legally permissible copayment or other payment), directly or indirectly, overtly or covertly, in cash or in kind (A) in return for referring an individual to a person for the furnishing, or arranging for the furnishing, of any item or service for which payment may be made in whole or in part by Medicare, Medicaid, or a federal healthcare program or (B) in return for purchasing, leasing, ordering or arranging for

or recommending purchasing, leasing or ordering any good, facility, service or item for which payment may be made in whole or in part by Medicare, Medicaid or a federal healthcare program;

(ii) knowingly or willfully made a payment, directly or indirectly, to a physician as an inducement to reduce or limit medically necessary services to individuals who are under the direct care of the physician and who are entitled to benefits under Medicare, Medicaid or a federal healthcare program, in a manner that would violate Applicable Law;

(iii) knowingly or willfully made or caused to be made or induced or sought to induce the making of any false statement or representation (or omitted to state a material fact) required to be stated therein (or necessary to make the statement contained therein not misleading) of a fact with respect to (A) the conditions or operations of an IRMC Entity in order that such entity would qualify for Medicare, Medicaid, or a federal healthcare program certification or (B) information required to be provided under Section 1124A of the Social Security Act (42 U.S.C. § 1320a-3a); or

(iv) knowingly or willfully (A) charged for any Medicaid service money or other consideration at a rate in excess of the rates established by Applicable Law or (B) charged, solicited, accepted or received, in addition to amounts paid by Medicaid, any gift, money, donation or other consideration (other than a charitable, religious, or other philanthropic contribution from an organization or from a person unrelated to the patient) (1) as a precondition of admitting the patient or (2) as a requirement for the patient's continued stay in a facility operated by the IRMC Entities in a manner that violates Applicable Law.

### **6.13 Owned Real Property and Environmental Laws.**

(a) Title to Owned Real Property and Other Assets. The IRMC Entities have provided or made available to CCF lists of all real property owned by any IRMC Entity by common address, property tax identification number, the IRMC Entity that owns such real property and whether such property is totally or partially exempt from real property or ad valorem taxation pursuant to Applicable Law (the "**Owned Real Property**"). As set forth on Schedule 6.13(a)-1, each of the designated IRMC Entities is the sole and exclusive owner of all right, title and interest in and has good and marketable fee simple title to the Owned Real Property so designated free and clear of all Encumbrances, other than Permitted Encumbrances. The Owned Real Property includes all real estate owned by the IRMC Entities and used in connection with their current operations. Except as set forth on Schedule 6.13(a)-2, no IRMC Entity has leased or otherwise granted to any person or entity the right to use any Owned Real Property or any portion thereof. There are no outstanding options, rights of first refusal or rights of first offer to purchase any Owned Real Property or any portion thereof or interest therein. To the Knowledge of the IRMC Entities, except as described on Schedule 6.13(a)-3, with respect to the Owned Real Property:

(i) No IRMC Entity has received during the past three (3) years notice of a violation of any Applicable Law, and no IRMC Entity has received notice of condemnation, Encumbrance (other than Permitted Encumbrances), assessment or the like, relating to any part of the Owned Real Property or the operation thereof;

(ii) There are no tenants or other persons or entities occupying any space in the Owned Real Property, or claiming any possession, adverse or not, to any portion of the Owned Real Property, other than pursuant to written tenant leases with an IRMC Entity or pursuant to subleases entered into with subtenants consistent with the terms and conditions of the primary lease;

(iii) Each parcel of Owned Real Property is either (A) totally or partially exempt from real property or ad valorem taxation pursuant to Applicable Law (other than assessments by any Government unless specifically exempted by the assessment); the IRMC Entities have furnished CCF with true and complete copies of determinations of exempt status and annual certification thereafter for such Owned Real Property and the IRMC Entities have received no notice and have no Knowledge that the status of such Owned Real Property will change from exempt to taxable or (B) separately assessed for real estate tax purposes and is not combined with any land or real estate that is not a part of the Owned Real Property for real estate tax assessment purposes, and the IRMC Entities have not received any notice of change in assessed value that is not reflected in Owned Real Property tax bills furnished to CCF except for any notice of change not yet reflected in such Owned Real Property tax bills which notice has been provided or made available to CCF;

(iv) No portion of any Owned Real Property is located within an area that has been identified by the Federal Emergency Management Agency as an area having special flood or mudslide hazards as such term is used in the National Flood Insurance Act of 1968, as amended and supplemented by The Flood Disaster Protection Act of 1973, and in regulations, interpretations and rulings thereunder;

(v) All permanent certificates of occupancy and all other licenses, permits, authorizations, consents, certificates and approvals required by all Government having jurisdiction and the requisite certificates of the local board of fire underwriters (or other body exercising similar functions), which, if not obtained would result in an IRMC Entity being unable to carry on its business have been issued for the Owned Real Property (and all individual items constituting the Owned Real Property), have been paid for, are in full force and effect, and, to the Knowledge of the IRMC Entities, will not be invalidated, violated or otherwise affected by the consummation of the Contemplated Transactions;

(vi) All buildings, structures, fixtures, building systems and equipment, and all components thereof with respect to the Owned Real Property (the “**Real Property Improvements**”), including the roofing/exterior/foundation systems, mechanical systems, HVAC systems, plumbing, electrical, security, utility and sprinkler systems, are in working condition, subject only to normal wear and tear and normal, scheduled maintenance, are sufficient for the operations currently conducted thereon, and the IRMC Entities are not aware of any material structural or other physical defect or deficiency in the condition of the Owned Real Property. There are no facts or conditions affecting the IRMC Entities that would, individually or in the aggregate, materially interfere with the use or occupancy of the Real Property Improvements or any portion thereof in the operations as currently conducted thereon.

(vii) To the Knowledge of the IRMC Entities, no IRMC Entity has received any notice of any existing, proposed or contemplated plans to modify or realign any

street or highway or any existing, proposed or contemplated eminent domain proceeding that would result in the taking of all or any part of the Owned Real Property or that would adversely affect the current use of any part of the Owned Real Property;

(viii) Upon consummation of the Contemplated Transactions, the current owners of the Owned Real Property will be entitled to continue to use any Owned Real Property that is currently employed by the IRMC Entities in the conduct of their operations as currently conducted; and

(ix) The Owned Real Property is subject to no easements, conditions, restrictions, ordinances, or other limitations that would make such property unusable for its current use or the title to such property unmarketable, or restrict or impair the current use or operation of the business in a manner consistent with the current use, or that would require the removal of any improvements, except for such easements, conditions, restrictions, ordinances, or other limitations that individually would not impair the value or the continued use and operation of the Owned Real Property as presently conducted by the IRMC Entities and other Permitted Encumbrances.

(b) Environmental Laws. Except as disclosed on Schedule 6.13(b): (i) the Owned Real Property is and for the prior three (3) years has been in material compliance with all applicable Environmental Laws; (ii) the IRMC Entities have not received any written notice within the past three (3) years and to the Knowledge of the IRMC Entities there is no notice that is outstanding or unresolved that could result in a liability under Environmental Law of the IRMC Entities; (iii) the IRMC Entities have not managed, processed, released, handled, disposed of, arranged for the disposal of, spilled or discharged Hazardous Substances or Medical Waste at, on or from the Owned Real Property or at, on or from any other property, except in material compliance with applicable Environmental Law; (iv) to the Knowledge of the IRMC Entities, no prior owners, operators or occupants of the Owned Real Property have caused or allowed any Hazardous Substances or Medical Waste to be discharged, managed, processed, released, disposed, spilled or otherwise handled on the Owned Real Property in violation of any Environmental Law; (v) the IRMC Entities are in material compliance and, for the prior three (3) years, have been in material compliance with all applicable Environmental Laws; (vi) to the Knowledge of the IRMC Entities, the Owned Real Property does not contain asbestos containing material in such form or condition for which abatement, repair or removal is required by applicable Environmental Law; and (vii) there are no, nor to the Knowledge of the IRMC Entities, have there been any dumps, pits or surface impoundments located on the Owned Real Property for the disposal or containment of Hazardous Substances or Medical Waste. IRMC will promptly notify CCF should any IRMC Entity obtain Knowledge, before the Closing Date, of any Encumbrance other than Permitted Encumbrances, notice, litigation, or threat of litigation arising after the Execution Date and relating to any alleged or actual violation of Environmental Law, any actual or alleged liability under any Environmental Law or any spill or release of any Hazardous Substance in violation of Environmental Laws with respect to any part of the Owned Real Property or related in any respect to the IRMC Entities. Except as disclosed on Schedule 6.13(b), none of the IRMC Entities has sent, arranged for disposal or treatment, arranged with a transporter for transport for disposal or treatment, transported, or accepted for transport any Hazardous Substances or Medical Waste, to a facility, site or location, that, pursuant to CERCLA or any similar state or local law, (i) has been placed or has been publicly



proposed by authorities having jurisdiction to be placed, on the National Priorities List or its state equivalent or (ii) to the Knowledge of the IRMC Entities, is subject to a claim, administrative order or other demand to take removal or remedial action by any Government having jurisdiction and authority in the matter. Except as disclosed on Schedule 6.13(b), none of the IRMC Entities has received any written requests for information, potentially responsible party letters or general or special notices alleging that any of the IRMC Entities is or may be liable pursuant to any Environmental Law for the treatment, storage, disposal, arrangement for disposal, transportation, release or threatened release of any Hazardous Substances or Medical Waste. All underground storage tanks on the Owned Real Property or currently used by the IRMC Entities to store Hazardous Substances are in material compliance with applicable Environmental Laws and have not leaked, spilled or discharged Hazardous Substances into the environment, including the surface or subsurface soil or groundwater around or adjacent to the underground storage tanks. IRMC has made available to CCF all Phase I reports, Phase II reports, environmental compliance audits, underground storage tank closure and investigation reports, asbestos surveys and abatement reports, indoor air quality assessments, mold abatement reports and Occupational Health and Safety Administration compliance audits in the possession, custody or control of the IRMC Entities with respect to the Owned Real Property.

**6.14 Leased Real Property.** The IRMC Entities have provided or made available to CCF true and complete copies of all leases of real property with respect to which an IRMC Entity is a landlord, tenant, sublessor, subtenant, licensor or licensee, setting forth the names of all parties thereto, the identity of the relevant landlord, tenant, sublessor, subtenant, licensor or licensee, the common address of the real property and the date of the lease (collectively, the “**IRMC Leases**”). Except as set forth on Schedule 6.14, with respect to the IRMC Leases:

(a) Each IRMC Entity that is a tenant or subtenant has valid and enforceable leasehold interests to the leasehold estate in the leased real property, subject to the Bankruptcy and Equity Exception;

(b) Each IRMC Lease has been duly authorized and executed by the applicable IRMC Entity, and to the Knowledge of the IRMC Entities, the other parties thereto;

(c) All rents and other amounts payable by the IRMC Entities pursuant to the IRMC Leases are based upon the fair rental value of the leased premises measured at the time such lease was entered into;

(d) No IRMC Entity is in default under any IRMC Lease, nor, to the IRMC Entities’ Knowledge, has any event occurred which, with notice or the passage of time, or both, would give rise to such a default by an IRMC Entity or the other parties thereto;

(e) All buildings, structures, fixtures, building systems and equipment, and all components thereof with respect to the leased real property (the “**Leased Real Property Improvements**”), including the roofing/exterior/foundation systems, mechanical systems, HVAC systems, plumbing, electrical, security, utility and sprinkler systems, are in working condition, subject only to normal wear and tear and normal, scheduled maintenance, are sufficient for the operations currently conducted thereon, and no IRMC Entity is aware of any

material structural or other physical defect or deficiency in the condition of the leased real property;

(f) To the Knowledge of the IRMC Entities, there are no facts or conditions affecting the IRMC Entities that would, individually or in the aggregate, materially interfere with the use or occupancy of the Leased Real Property Improvements or any portion thereof in the operations as currently conducted thereon;

(g) Except as set forth on Schedule 6.14(g), no IRMC Entity has received a notice of non-renewal of an IRMC Lease; and

(h) Except as set forth on Schedule 6.14(h), the IRMC Entities have not assigned, transferred, conveyed, mortgaged, deeded in trust, or Encumbered (other than Permitted Encumbrances) any interest in any leasehold under any IRMC Lease.

**6.15 Title to Assets; Condition of Assets.** Except as disclosed on Schedule 6.15, other than Owned Real Property that is provided for in Section 6.13(a), and leasehold interests that are provided for in Section 6.14, each of the IRMC Entities has good and defensible title to all of its assets of every kind, character and description, whether personal, tangible or intangible, used in connection with the operation of the businesses of the respective IRMC Entities, free and clear of all Encumbrances, other than Permitted Encumbrances, and such assets are in good operating condition, subject only to normal wear and tear and normal, scheduled maintenance, and are sufficient for the operations currently conducted therewith.

**6.16 Tax Exempt Status.** The IRS has not taken, or, to the Knowledge of the IRMC Entities, proposed to take, any action to revoke the tax-exemption of any of the tax-exempt IRMC Entities, and has not determined in writing or, to the Knowledge of the IRMC Entities, proposed to announce, that any of the IRMC Entities is a “private foundation” within the meaning of Section 509(a) of the Code. To the Knowledge of the IRMC Entities, there has been no change in the organization or operation of any of the tax-exempt IRMC Entities that is reasonably likely to result in a loss of an IRMC Entity’s status as an organization described in Section 501(c)(3) of the Code or that is reasonably likely to cause an IRMC Entity to be treated as a “private foundation” within the meaning of Section 509(a) of the Code.

**6.17 Insurance.** The IRMC Entities have provided or made available to CCF a true, accurate, correct and complete list (including the name of the insurer, coverage, premium, deductible, liability amount, expiration date, and whether underwritten on a claims-made or occurrence basis) of all binders and policies of insurance maintained by the IRMC Entities under which an IRMC Entity is a named insured or that otherwise insure assets used primarily in connection with the operation of the IRMC Entities (collectively, the “**Insurance Policies**”). Except as set forth on Schedule 6.17, the Insurance Policies are in full force and effect and will remain in full force and effect through the Closing Date, be renewed if set to expire prior to the Closing Date or be replaced with substantially similar coverage. The IRMC Entities have not received notice that any of the Insurance Policies will be canceled or not renewed.

**6.18 Taxes.** The IRMC Entities have filed, or will file, all returns, declarations, and reports and all information returns and statements required to be filed or sent with respect to all

Taxes for all periods preceding the Closing Date (collectively, the “Returns”). As of the time of filing, the Returns correctly reflected, and Returns prepared or being prepared but not yet filed as of the Execution Date, will correctly reflect, the income, business, assets, operations, activities and status of the IRMC Entities and any other information required to be shown therein. Each IRMC Entity has timely paid or made provision for the payment of all Taxes shown as due and payable on its Returns required to be filed or sent before the Execution Date and has made provision for timely payment of all Taxes that will be shown as due and payable on its Returns required to be filed or sent by it after the Execution Date and relating to any period before the Closing Date.

#### **6.19 Labor and Employment Matters.**

(a) The IRMC Entities are in material compliance with all Applicable Law respecting employment and employment practices, terms and conditions of employment, nondiscrimination, employee and independent contractor classifications, employee leave laws, disability rights or benefits, equal opportunity, immigration, labor relations, benefits, payment of employment, social security, and similar employer-required contributions, withholdings and taxes, occupational safety and health, worker’s compensation, unemployment insurance, plant closings and layoffs, and wages and hours. The IRMC Entities have made available to CCF copies of all material independent contractor agreements, consultation agreements or other types of similar agreements currently in effect. No IRMC Entity is a party to, or otherwise bound by, any consent decree with, or citation by, any Government relating to employees or employment practices. The IRMC Entities have not received any written notice of intent by any Government responsible for the enforcement of labor or employment Applicable Laws to conduct an investigation relating to any IRMC Entity that remains unresolved and, to the Knowledge of the IRMC Entities, no such investigation is in progress.

(b) There has not been within the last three (3) years, and there is not presently pending or, to the Knowledge of the IRMC Entities, threatened, any strike, dispute, slowdown, picketing, work stoppage, or employee grievance process, or any proceeding against or affecting the IRMC Entities relating to an alleged violation of any Applicable Law pertaining to labor relations, including any charge, complaint or unfair labor practices claim filed by an employee, union, or other person with the National Labor Relations Board or any Government, organizational activity, or other labor dispute against or affecting the IRMC Entities or their operations or assets. With respect to the employees of the IRMC Entities, except as set forth on Schedule 6.19(b) (i) no collective bargaining agreement exists or is currently being negotiated to which any of the IRMC Entities is a party or is bound, (ii) no labor union or collective bargaining representative has been certified as representing any employees, (iii) no demand has been made for recognition by a labor organization or other collective bargaining representative and no such agreement to recognize has been made, and (iv) to the Knowledge of the IRMC Entities, no union representation question exists, no union organizing activities are taking place, within the past three years have taken place or have been threatened to take place, and none of the employees of the IRMC Entities are represented by any labor union or collective bargaining representative. IRMC has made available to CCF true and accurate copies of all such agreements listed on Schedule 6.19(b).

(c) There has been no “mass layoff” or “plant closing” within the meaning of the Worker Adjustment and Retraining Notification Act of 1988, as amended (“**WARN**”), and any similar state or local “mass layoff” or “plant closing” law with respect to the IRMC Entities within the twelve (12) months before Closing and there are no employees who had an “employment loss,” as such term is defined in WARN or any similar state or local legal requirements within the ninety (90) days preceding the Execution Date.

## **6.20 Employee Benefits.**

(a) The IRMC Entities have provided or made available to CCF an accurate, correct and complete list of all “employee welfare benefit plans” (as defined in Section 3(1) of ERISA), “employee pension benefit plans” (as defined in Section 3(2) of ERISA), and all other employee benefit plan agreements and arrangements and employee benefit policies, whether funded or unfunded, qualified or nonqualified, subject to ERISA or not, maintained or contributed to (or required to be contributed to) by IRMC Entities for the benefit of any of their officers, employees or other persons (all the foregoing being herein referred to as “**Benefit Plans**”). IRMC also has made available to CCF the following:

- (i) Each Benefit Plan and all amendments thereto;
- (ii) The three most recent annual reports on Form 5500, if required, filed with the IRS or the Department of Labor with respect to any Benefit Plan, including all schedules and attachments;
- (iii) Each trust agreement, annuity contract or insurance contract, if any, relating to any Benefit Plan and any amendments thereto;
- (iv) The most recent certified financial statements relating to each Benefit Plan, as applicable, and the most recent actuarial reports for any Benefit Plan that is a tax qualified defined benefit pension plan;
- (v) The summary plan description and all summaries of material modifications for each Benefit Plan;
- (vi) Each determination letter, ruling letter or any outstanding ruling request on the tax exempt status of any qualified Benefit Plan or any voluntary employees’ beneficiary association implementing a Benefit Plan;
- (vii) Any and all notices of any audit or investigation of a Benefit Plan that were given by the IRS, the Pension Benefit Guaranty Corporation or the Department of Labor to IRMC or any IRMC Entity within the four years preceding the Execution Date; and
- (viii) Any voluntary correction filing submitted with respect to any Benefit Plan within the last four years to the IRS or Department of Labor; with respect to each employee welfare benefit plan providing health benefits subject to COBRA, sample correspondence to employees from each such plan giving notice of their rights under Section 4980B of the Code and any other documents relating to such plan indicating compliance with Code Section 4980B.

(b) All contributions to, and payments from, the Benefit Plans required to be made in accordance with the terms of the Benefit Plans and Applicable Law have been timely made. Except as disclosed to CCF, no Benefit Plan is subject to the funding rules of Section 302 of ERISA or Section 412 of the Code.

(c) All Benefit Plans (and all related trust agreements or annuity contracts or any funding instruments) have been administered in accordance with their terms and materially comply currently, and have materially complied in the past, both as to form and operation, with the provisions of applicable tax laws, the Code and Applicable Law. To the extent that any Benefit Plan is a tax qualified retirement plan, it has been maintained and administered in accordance with its terms and the provisions of applicable tax laws and the Code, where required for the Benefit Plan to be tax qualified under Sections 401(a) and 501(a) of the Code, and all other Applicable Law. Except as disclosed to CCF, the Benefit Plans that are pension benefit plans have received determination letters or private letter rulings from the IRS to the effect that such Benefit Plans are qualified and exempt from Federal income taxes under Sections 401(a) and 501(a), respectively, of the Code, and no such determination letter or private letter ruling has been revoked nor, to the Knowledge of the IRMC Entities, has revocation been threatened, nor has any such Benefit Plan been amended or experienced any change in facts or circumstances since the date of its most recent determination letter or private letter ruling or application therefor in any respect which would adversely affect its qualification.

(d) All reports, returns and similar documents with respect to the Benefit Plans required to be filed with any Government or distributed to any Benefit Plan participant have been duly and timely filed or distributed. To the Knowledge of the IRMC Entities, there are no threatened or pending investigations by any Government, termination proceedings or other claims (except claims for benefits payable in the normal operation of the Benefit Plans), suits or proceedings against or involving any Benefit Plan or asserting any rights or claims to benefits under any Benefit Plan that could reasonably be expected to give rise to any liability, nor are there any facts that could reasonably be expected to give rise to any liability in the event of any such investigation, claim, suit or proceeding.

(e) To the Knowledge of the IRMC Entities, no “prohibited transaction” (as defined in Section 4975 of the Code or Section 406 of ERISA) has occurred that involves the assets of any Benefit Plan and that could reasonably be expected to subject any of the IRMC Entities, or any of their respective employees, or a trustee, administrator or other fiduciary of any trust created under any Benefit Plan, to the tax or penalty on prohibited transactions imposed by Section 4975 of the Code or the sanctions imposed under Title I of ERISA. No Benefit Plan which has been terminated has or may cause liability to any of the IRMC Entities.

(f) No Benefit Plan provides medical benefits to any current or future retired or terminated employee (or any dependent thereof) of IRMC or an IRMC Entity, other than as required pursuant to COBRA.

(g) Each Benefit Plan that is a nonqualified deferred compensation plan (as defined in Code Section 409A(d)(1)) has been operated since January 1, 2005 in good faith compliance with Code Section 409A and the underlying IRS guidance and Department of Treasury Regulations.

**6.21 Payment Programs.** The IRMC Entities have provided or made available to CCF a true and accurate list of all of the private, commercial and governmental payment and procurement programs with which the IRMC Entities are participating providers or suppliers (including Medicare and Medicaid) (the “**Payment Programs**”). Except as set forth on Schedule 6.21:

(a) No IRMC Entity is engaged in termination proceedings as to its respective participation in any Payment Program, and no IRMC Entity has received notice that its current participation in any Payment Program is subject to any contest, termination, suspension or change as a result of alleged violations or any noncompliance with participation requirements;

(b) No IRMC Entity has taken or committed to any action, entered into any agreement, contract or undertaking, or taken or omitted to take any other action of any nature whatsoever that was or is in material violation of any applicable Payment Program condition of participation, contract, standard, policy, rule, regulation, procedure or other requirement;

(c) All billing and collection practices of each IRMC Entity and, to the Knowledge of the IRMC Entities, of any billing and/or collection agent acting on behalf of any IRMC Entity have been in material compliance with all Health Care Laws and the conditions for participation, contracts, standards, policies, rules, regulations, manuals, procedures and requirements of applicable Payment Programs;

(d) All cost reports and cost statements submitted by the IRMC Entities to any Payment Program are true, accurate and complete and have been prepared and submitted in accordance with cost and accounting principles consistently applied that comply with all applicable Payment Program conditions for participation, contracts, standards, policies, rules, regulations, manuals, procedures and requirements, including Payment Program interpretations and guidance;

(e) IRMC has provided CCF with access to all open cost reports and a description of their status;

(f) No IRMC Entity has knowingly taken any of the following actions: (i) submitted to any Payment Program any false, fraudulent, abusive or improper claim for payment; (ii) billed any Payment Program for any service not rendered or not rendered as claimed; or (iii) retained any payment or reimbursement from any Payment Program in excess of the proper amount allowed by Applicable Law and applicable contracts or agreements with the Payment Programs;

(g) There is no audit, investigation, adverse action, or civil, administrative, or criminal proceeding pending or, to the Knowledge of the IRMC Entities, threatened relating to participation in any Payment Program by any IRMC Entity; and to the Knowledge of the IRMC Entities there is no basis for any such adverse action by the Payment Program against any IRMC Entity;

(h) Within the last three years, no Payment Program has requested or, to the Knowledge of the IRMC Entities, threatened any material recoupment, refund, or set off from

any IRMC Entity other than in the Ordinary Course of Business, or imposed any fine, penalty or other sanction on any IRMC Entity; and

(i) The IRMC Entities have complied, or will comply, in a timely manner with any notice, approval, application, submission, filing or other requirements of the Payment Programs with respect to the Contemplated Transactions, including any transfer or change of ownership requirements.

**6.22 Accreditation.** The IRMC Entities have provided or made available to CCF a list of the IRMC Entities' current accreditations by various accreditation organizations, including The Joint Commission (collectively, the "**Accreditations**"). Except as set forth on Schedule 6.22: (a) all of the Accreditations have been duly obtained, are held by the respective IRMC Entities, are current and valid, and are in full force and effect; (b) to the Knowledge of the IRMC Entities, no event has occurred or other fact exists with respect to the Accreditations that allows, or after notice or lapse of time or both would allow, revocation, suspension, or restriction, limitation or termination of any of the Accreditations or would result in any other impairment of the rights of the holder of any of the Accreditations; (c) no notice from any accreditation organization in respect to the revocation, suspension, restriction, limitation or termination of any Accreditations has been issued, received or, to the Knowledge of the IRMC Entities, proposed or threatened; and (d) no statement of deficiencies, survey report, inspection report, notice of audit, audit results, complaint or other notice of noncompliance with the requirements, standards or other conditions of any Accreditation has been issued, received or, to the Knowledge of the IRMC Entities, proposed or threatened by any Accreditation organization, for which any actual or potential obligation exists.

**6.23 Compliance Program.** IRMC has provided to CCF a copy of IRMC's current compliance program materials. Except as set forth on Schedule 6.23, no IRMC Entity: (a) is a party to a Corporate Integrity Agreement with the Office of Inspector General of the United States Department of Health and Human Services or a settlement agreement with the Centers for Medicare and Medicaid Services; (b) has a reporting obligation pursuant to any settlement agreement entered into with any Government; (c) to the Knowledge of the IRMC Entities, has been the subject of any Government payer program investigation conducted by any federal or state enforcement agency within the past six (6) years; (d) to the Knowledge of the IRMC Entities has been a defendant in any unsealed *qui tam*/False Claims Act litigation; (e) has been served with or received any search warrant, subpoena, civil investigative demand, contact letter, or, to the Knowledge of the IRMC Entities, telephone or personal contact by or from any federal or state enforcement agency pertaining to the potential violation of any Health Care Law (except in connection with medical services provided to third parties who may be defendants or the subject of investigation into conduct unrelated to the operation of the health care businesses conducted by the IRMC Entities); (f) within the past six (6) years has received, to the IRMC Entities' Knowledge, any complaints from employees, independent contractors, vendors, physicians, or any other person that resulted in a claim being filed with a Government alleging that an IRMC Entity has violated any Applicable Law; or (g) has made any self-disclosures to or has any self-disclosures pending with any Government for actual or potential violations of a Health Care Law. For purposes of this Agreement, the term "compliance program" refers to provider programs of the type described in the compliance guidance published by the Office of Inspector General of the Department of Health and Human Services.

**6.24 Exclusion from Health Care Programs.** Neither any IRMC Entity nor any of its respective officers, directors, agents, or managing employees (as such term is defined in 42 U.S.C. § 1320a-5b) nor any other of its employees, agents or independent contractors has been: (a) excluded from participating in any Federal Health Care Program (as defined in 42 U.S.C. § 1320a-7b(f)); (b) subject to sanction or been indicted or convicted of a crime, or pled nolo contendere or to sufficient facts, in connection with any allegation of violation of any Federal Health Care Program requirement or Health Care Law; (c) debarred or suspended from any federal or state procurement or nonprocurement program by any Government; or (d) designated a Specially Designated National or Blocked Person by the Office of Foreign Asset Control of the U.S. Department of Treasury.

**6.25 Medical Staff Matters.** IRMC has provided to CCF true, correct, and complete copies of the bylaws and rules and regulations of the medical staff of IRMC, as well as a list of all current members of the medical staff. Except as previously disclosed to CCF in writing (a) there are no adverse actions with respect to any medical staff members of IRMC or any applicant thereto for which a medical staff member or applicant has requested a judicial review hearing that has not been scheduled or has been scheduled but has not been completed, (b) there are no pending or, to the Knowledge of the IRMC Entities, threatened disputes with IRMC applicants, staff members, or health professional affiliates, and no IRMC Entity knows of any basis therefor, and (c) all appeal periods in respect of any medical staff member or applicant against whom an adverse action has been taken have expired. Notwithstanding the foregoing provisions of this Section 6.25, IRMC is not and will not be required to disclose any information pursuant to this Section 6.25 where such disclosure is prohibited by Applicable Law or where such disclosure would potentially jeopardize any applicable privilege which would protect the disclosure of such information to third parties.

**6.26 Experimental Procedures.** The IRMC Entities have not performed or permitted the performance of any experimental or research procedures or studies involving patients not authorized and conducted in accordance with the procedures of the applicable Institutional Review Board.

**6.27 Intellectual Property; Computer Software.** No proceedings are pending or, to the Knowledge of the IRMC Entities, threatened that challenge the validity of the ownership by the IRMC Entities of any material trademarks, service marks, trade names, patents, copyrights, and applications therefore (whether registered or common law) currently owned or used by the IRMC Entities (“**Intellectual Property**”). The IRMC Entities have not licensed anyone to use such Intellectual Property and no IRMC Entity has any Knowledge of the use or the infringement of any such Intellectual Property by any other person. The IRMC Entities own (or possesses adequate and enforceable licenses or other rights to use) all Intellectual Property and all computer software programs and similar systems used in the conduct of their businesses.

**6.28 No Brokerage.** No IRMC Entity has contacted a broker in connection with the Contemplated Transactions other than Juniper Advisory, LLC.

**6.29 No Third Party Beneficiaries.** The representations and warranties of the IRMC Entities contained in this Article 6 are solely for the benefit of the other Parties. No other Person shall be a third party beneficiary of the representations and warranties of the IRMC Entities



contained in this Article 6 or have any claim with respect to any breach or inaccuracy, alleged or otherwise, of such representations and warranties.

## **ARTICLE 7 REPRESENTATIONS AND WARRANTIES OF DISTRICT**

The District hereby represents and warrants:

### **7.1 Due Organization; Good Standing; Power.**

(a) The District is a special taxing district located in Indian River County, Florida, and created by the Legislature of the State of Florida.

(b) The District was formed by the Florida Legislature pursuant to Chapter 2003-382, Laws of Florida, and is in good standing under the laws of the State of Florida, and has the power and authority to own, operate or hold under lease its properties and assets and to carry on its business and operations as presently conducted.

### **7.2 Authorization.**

(a) The District has the full power and authority to enter into and to perform its obligations under this Agreement.

(b) The execution, delivery and performance of this Agreement by the District have been duly and properly authorized by all necessary action in accordance with its Enabling Act (Chapter 2003-382, Laws of Florida) and its Bylaws.

(c) This Agreement constitutes the valid and legally binding obligation of the District, enforceable against it in accordance with its terms, except as enforceability may be limited by the Bankruptcy and Equity Exception.

### **7.3 No Violation; Approvals.**

(a) The execution, delivery and performance of this Agreement will not result in the creation of any Encumbrance on the Hospital Facilities other than a Permitted Encumbrance and is not prohibited by, does not violate or conflict with any provision of, and does not constitute a material default under or material breach of any material contract, indenture, mortgage, material permit or license, approval or other commitment to which the District is a party or is subject or by which the District is bound, or its Enabling Act (Chapter 2003-382, Laws of Florida) or Chapter 189, Florida Statutes, Chapter 119, Florida Statutes, Section 286.011, Florida Statutes, and Section 155.40, Florida Statutes.

(b) Assuming the truth and accuracy of the representations and warranties of the IRMC Entities and CCF set forth in this Agreement and in reliance thereon, except (i) to the extent specified on Schedule 6.4(b), (ii) for filings required pursuant to the HSR Act and for any applicable filings with the Florida Attorney General, and (iii) those the failure of which to obtain or make would not prevent or materially delay the Closing, no approval, authorization, registration, consent, order, filing or other action that has not occurred or been obtained with or

from any person, including any Government, is required for the execution and delivery by the District of this Agreement or the consummation by the District of the Contemplated Transactions.

**7.4 No Material Omissions.**

(a) To District's Knowledge, the District has responded accurately in all material respects to all requests for information and documentation made by CCF in connection with its due diligence review of the business, operations, assets and liabilities of the District. The District has not to its Knowledge omitted any material information relating to the businesses, operations, assets or liabilities of the District in its responses to CCF's requests. Since the delivery of such responses to CCF, the District has not received or failed to disclose any material information which would render untrue or misleading in any material respect any information previously disclosed to CCF in response to its requests for information.

(b) The representations and warranties of the District contained in this Agreement, and each Exhibit, Schedule, certificate or other document delivered at Closing by the District pursuant to this Agreement, are accurate, correct and complete in all material respects and do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements and information contained therein not misleading.

**7.5 Compliance with Law.** The District is in material compliance with its Enabling Act (Chapter 2003-382, Laws of Florida), Chapter 189, Florida Statutes, Chapter 119, Florida Statutes, Section 286.011, Florida Statutes, and Section 155.40, Florida Statutes.

**7.6 Legal Proceedings.** The District is not a defendant in, or, to the Knowledge of the District, has been threatened with any action, suit, proceeding, complaint, charge, hearing or arbitration, or any investigation by any Government that: (a) would impair the ability of the District to perform its obligations hereunder; (b) would impair the ability of the District to conduct its businesses and operations as presently conducted; or (c) would have or result in, or would reasonably be expected to have or result in, a Material Adverse Event.

**7.7 No Third Party Beneficiaries.** The representations and warranties of the District contained in this Article 7 are solely for the benefit of the other Parties. No other Person shall be a third party beneficiary of the representations and warranties of the District contained in this Article 7 or have any claim with respect to any breach or inaccuracy, alleged or otherwise, of such representations and warranties.

**ARTICLE 8  
REPRESENTATIONS AND WARRANTIES OF CCF**

CCF and Cleveland Clinic Florida hereby jointly and severally represent and warrant:

**8.1 Due Organization; Good Standing; Power.**

(a) CCF is an Ohio not-for-profit corporation. CCF is exempt from federal income taxation under Section 501(a) of the Code, as an organization described in

Section 501(c)(3) of the Code and is not a “private foundation” within the meaning of Section 509(a) of the Code.

(b) Cleveland Clinic Florida is a Florida not-for-profit corporation. Cleveland Clinic Florida is exempt from federal income taxation under Section 501(a) of the Code, as an organization described in Section 501(c)(3) of the Code and is not a “private foundation” within the meaning of Section 509(a) of the Code.<sup>6</sup>

(c) CCF is duly formed, validly existing and in good standing under the laws of the State of Ohio, and has the corporate power and authority to own, operate or hold under lease its properties and assets and to carry on its business and operations as presently conducted.

(d) Cleveland Clinic Florida is duly formed, validly existing and in good standing under the laws of the State of Florida, and has the corporate power and authority to own, operate or hold under lease its properties and assets and to carry on its business and operations as presently conducted.

## **8.2 Corporate Authorization.**

(a) CCF has the full corporate power and authority to enter into and to perform its obligations under this Agreement. Cleveland Clinic Florida has the full corporate power and authority to enter into and to perform its obligations under this Agreement.

(b) The execution, delivery and performance of this Agreement by CCF and by Cleveland Clinic Florida have been duly and properly authorized by all necessary corporate action in accordance with their respective Governing Documents.

(c) This Agreement constitutes the valid and legally binding obligation of CCF, enforceable against it in accordance with its terms, except as enforceability may be limited by the Bankruptcy and Equity Exception.

(d) This Agreement constitutes the valid and legally binding obligation of Cleveland Clinic Florida, enforceable against it in accordance with its terms, except as enforceability may be limited by the Bankruptcy and Equity Exception.

## **8.3 No Violation; Approvals.**

(a) The execution, delivery and performance of this Agreement will not result in the creation of any Encumbrance other than Permitted Encumbrances or the termination or acceleration of any Indebtedness or other obligation of CCF or Cleveland Clinic Florida, and is not prohibited by, does not violate or conflict with any provision of, and does not constitute a default under or breach of any material contract, indenture, mortgage, material permit or license, approval or other commitment to which CCF or Cleveland Clinic Florida is a party or is subject or by which CCF or Cleveland Clinic Florida is bound, or any Applicable Law.

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<sup>6</sup> To be updated based on entity used.

(b) Assuming the truth and accuracy of the representations and warranties of the IRMC Entities and the District set forth in this Agreement and in reliance thereon, except (i) to the extent specified on Schedule 6.4(b), (ii) for filings required pursuant to the HSR Act and for any applicable filings or notice to the Florida Attorney General, and (iii) those the failure of which to obtain or make would not prevent or materially delay the Closing, no approval, authorization, registration, consent, order, filing or other action that has not occurred or been obtained with or from any person, including any Government, is required for the execution and delivery by CCF of this Agreement or the consummation by CCF and Cleveland Clinic Florida of the Contemplated Transactions.

**8.4 Licenses and Permits.** CCF and Cleveland Clinic Florida each holds and is in material compliance with all Government licenses, permits, certificates, consents and approvals as are necessary to run its operations as currently operated, and all such are current, unrestricted and valid.

**8.5 No Material Omissions.**

(a) To the Knowledge of CCF, CCF (and to the extent appropriate Cleveland Clinic Florida) has responded accurately in all material respects to all requests for information and documentation made by IRMC and the District in connection with their due diligence review of the business, operations, assets and liabilities of CCF (and to the extent appropriate Cleveland Clinic Florida). CCF (and to the extent appropriate Cleveland Clinic Florida) has not to its Knowledge omitted any material information relating to the businesses, operations, assets or liabilities of CCF in its responses to IRMC's or the District's requests. Since the delivery of such responses to IRMC and the District, CCF (and to the extent appropriate Cleveland Clinic Florida) has not received or failed to disclose any material information which would render untrue or misleading in any material respect any information previously disclosed to CCF (and to the extent appropriate Cleveland Clinic Florida) in response to its requests for information.

(b) The representations and warranties of CCF and Cleveland Clinic Florida contained in this Agreement, and each Exhibit, Schedule, certificate or other document delivered at Closing by CCF and/or Cleveland Clinic Florida pursuant to this Agreement, are accurate, correct and complete in all material respects and do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements and information contained therein not misleading.

**8.6 Compliance with Law.** CCF and Cleveland Clinic Florida are in material compliance with all Applicable Law.

**8.7 Tax Exempt Status.** The IRS has not taken, or, to the Knowledge of CCF (or Cleveland Clinic Florida), proposed to take, any action to revoke the tax-exemption of CCF or Cleveland Clinic Florida, and has not determined in writing or, to the Knowledge of CCF (or Cleveland Clinic Florida), proposed to announce, that CCF or Cleveland Clinic Florida is a "private foundation" within the meaning of Section 509(a) of the Code. To the Knowledge of CCF (or Cleveland Clinic Florida), there has been no change in the organization or operation of CCF or Cleveland Clinic Florida that would result in a loss of CCF's or Cleveland Clinic Florida's status as an organization described in Section 501(c)(3) of the Code or which could

cause CCF or Cleveland Clinic Florida to be treated as a “private foundation” within the meaning of 509(a) of the Code.

**8.8 Exclusion from Health Care Programs.** Neither CCF nor Cleveland Clinic Florida nor any of their respective officers, directors, agents, or managing employees (as such term is defined in 42 U.S.C. § 1320a-5(b)) nor any other of its employees, agents or independent contractors has been (a) excluded from participating in any Federal Health Care Program (as defined in 42 U.S.C. § 1320a-7b(f)); (b) subject to sanction or been indicted or convicted of a crime, or pled nolo contendere or to sufficient facts, in connection with any allegation of violation of any Federal Health Care Program requirement or Health Care Law; (c) debarred or suspended from any federal or state procurement or nonprocurement program by any Government; or (d) designated a Specially Designated National or blocked Person by the Office of Foreign Asset Control of the U.S. Department of Treasury.

**8.9 Legal Proceedings.** Neither CCF nor Cleveland Clinic Florida is a defendant in, or, to the Knowledge of CCF (or Cleveland Clinic Florida), has been threatened with any action, suit, proceeding, complaint, charge, hearing or arbitration, or any investigation by any Government that (a) would impair the ability of CCF to perform its obligations hereunder; (b) would impair the ability of CCF or Cleveland Clinic Florida to conduct its businesses and operations as presently conducted; or (c) would have or result in, or would reasonably be expected to have or result in, a Material Adverse Event.

**8.10 Interim Changes.** Except for matters expressly permitted or authorized by this Agreement or except as set forth on Schedule 8.10, there has not been, after the date of the most recent CCF audited financial statements provided by CCF to IRMC and the District, any Material Adverse Event with respect to CCF or Cleveland Clinic Florida.

**8.11 No Third Party Beneficiaries.** The representations and warranties of CCF and Cleveland Clinic Florida contained in this Article 8 are solely for the benefit of the other Parties. No other Person shall be a third party beneficiary of the representations and warranties of CCF and Cleveland Clinic Florida contained in this Article 8 or have any claim with respect to any breach or inaccuracy, alleged or otherwise, of such representations and warranties.

## **ARTICLE 9 PRE-CLOSING COVENANTS OF IRMC ENTITIES**

**9.1 Interim Conduct of Business.** From the Execution Date to the Closing Date:

- (a) Each IRMC Entity will:
  - (i) Preserve, protect and maintain its business, properties and assets;
  - (ii) Maintain its assets in a state of good repair and in a condition that complies with all Applicable Law and is consistent with the Ordinary Course of Business;
  - (iii) Operate its businesses as a going concern and in the Ordinary Course of Business;

(iv) Preserve the goodwill of all individuals and entities having business or other relations with it or them, including physicians, employees, patients, customers and suppliers;

(v) Periodically report to CCF regarding the IRMC System's operations, financial condition and prospects;

(vi) Pay when due or otherwise satisfy in the Ordinary Course of Business all of its bona fide liabilities incurred in the Ordinary Course of Business, subject to good faith disputes;

(vii) Continue in full force and effect the insurance coverage under the Insurance Policies or substantially equivalent policies;

(viii) Maintain its books and records in the Ordinary Course of Business;  
and

(ix) Obtain all documents called for by this Agreement and required to facilitate the consummation of the Contemplated Transactions.

(b) IRMC will provide CCF with the Interim Financial Statements as set forth in Section 6.5(a).

(c) Neither IRMC nor any of the other IRMC Entities will do any of the following without the prior written consent of CCF:

(i) Make any changes, or permit any changes to be made, in the Governing Documents of the IRMC Entities, except for changes expressly contemplated by this Agreement;

(ii) Enter into any transaction or contractual obligation (A) reasonably expected to result in an expenditure or obligations in excess of \$200,000 that is not included in the IRMC System's routine annual capital and operating budgets or (B) that could result in a Material Adverse Event with respect to the IRMC Entities, except for transactions expressly authorized by this Agreement;

(iii) Initiate a change in the identity or material change in the duties of the CEO, COO, CFO, or Chief Legal Officer of any IRMC Entity;

(iv) Make any expenditures in excess of \$500,000 that are not included in the IRMC System's routine annual capital and operating budgets;

(v) Dispose of any property, rights or other assets owned by or employed in the IRMC Entities, except for dispositions in the usual and Ordinary Course of Business;

(vi) Adopt or materially amend any bonus, profit sharing, incentive or severance agreement or arrangement, or any Benefit Plan, involving any officer, director or employee of the IRMC Entities;

(vii) Engage in any “mass layoff” or “plant closing” as such terms are defined in WARN; or

(viii) Enter into any new or amend in any material way any existing Material Contract other than:

(A) Material Contracts described in Section 1.83(f), provided that copies thereof are provided to CCF;

(B) Renewals of or amendments to Payment Program contracts in effect as of the Execution Date which occur by virtue of the natural expiration of the terms of such Payment Program contracts; and

(C) Renewals of or amendments to Material Contracts described in Section 1.83(j) which occur by virtue of the natural expiration of the terms of such Material Contracts, provided that copies thereof are provided to CCF.

**9.2 Preserve Accuracy of Representations and Warranties.** From the Execution Date to the Closing Date:

(a) The IRMC Entities will not take any action which would render any representation or warranty contained in Article 6 inaccurate or untrue in any material respect as of the Closing Date.

(b) IRMC will promptly notify CCF of any lawsuits, claims, administrative actions or other proceedings asserted or commenced against any IRMC Entity, or its officers, directors or members involving in any material way the ability of the IRMC Entities to consummate the Contemplated Transactions, or that are likely to result in a Material Adverse Event.

(c) IRMC will promptly notify CCF in writing of any facts or circumstances which come to its attention and which cause, or through the passage of time may cause, any of the representations and warranties made by the IRMC Entities and contained in Article 6 or the Schedules thereto to be untrue or misleading in any material respect at any time from the Execution Date to the Closing Date.

**9.3 Access to Information.**

(a) From the Execution Date to the Closing Date, the IRMC Entities will continue to give to CCF and to its representatives full and free access, during normal business hours, to all properties, books, records and contracts and other materials pertaining to the businesses, properties and assets of the IRMC Entities, as may be requested by CCF (and in accordance with guidelines approved by the CCF’s and IRMC’s antitrust counsel), subject to reasonable advance notice.

(b) IRMC will cooperate in keeping CCF fully informed and will promptly notify CCF of any Material Adverse Event.

**9.4 Maintain Books and Accounting Practices.** From the Execution Date to the Closing Date, IRMC will maintain the books of account of the IRMC Entities in the usual, regular and ordinary manner in accordance with GAAP consistently applied and on a basis consistent with prior years, including the consistent use of assumptions, practices, procedures and terminology, and except as otherwise required by GAAP, IRMC will not make or cause to be made any material changes in the accounting methods or practices of the IRMC Entities, including, as applicable, the methods or practices set forth in Section 6.5(c).

**9.5 Compliance with Laws.** From the Execution Date to the Closing Date, the IRMC Entities will:

(a) Materially comply with all Applicable Law affecting the IRMC Entities;  
and

(b) Keep, hold and maintain all certificates, Accreditations, Licenses and Permits necessary for the conduct and operation of the IRMC Entities.

**9.6 No Conflicting Transactions.** From the Execution Date to the Closing Date, none of the IRMC Entities will, without the prior written consent of CCF: (a) enter into any Change of Control agreement or other transaction that would materially constrain its ability to consummate the Contemplated Transactions; and (b) explore, meet, discuss, negotiate, directly or indirectly, or enter into an agreement with any third party for the purpose of discussing, organizing, formulating, designing, developing, investing in or implementing an arrangement that could lead to a Change of Control.

**9.7 Third Party Authorizations.** From the Execution Date to the Closing Date, the IRMC Entities will use commercially reasonable efforts to obtain expeditiously and in coordination with CCF all consents, approvals and authorizations of third parties, whether by Government or private Person, make all filings, and give all notices that (a) are listed on Schedule 6.4(b) or Schedule 9.7 or (b) are identified by CCF as reasonably necessary, appropriate or advisable under Applicable Law or under all contracts, agreements and commitments, or to the extent necessary for the valid execution, delivery and performance of this Agreement by the IRMC Entities.

**9.8 Confidentiality of CCF Information.** The Confidentiality Agreement by and between CCF and IRMC dated October 3, 2017 (the “**Confidentiality Agreement**”), will remain in full force and effect.

## **ARTICLE 10 PRE-CLOSING COVENANTS OF THE DISTRICT**

**10.1 Interim Conduct of Business.** From the Execution Date to the Closing Date:

(a) The District will:



and

- (i) Preserve, protect and maintain its business, properties and assets;

- (ii) Obtain all documents called for by this Agreement and required to facilitate the consummation of the Contemplated Transactions.

(b) The District will not do any of the following without the prior written consent of CCF and IRMC:

- (i) Enter into any transaction or contractual obligation in such a manner, that would prohibit it from performing its obligations under this Agreement;

- (ii) Enter into any transaction or contractual obligation that could result in a Material Adverse Event with respect to the District, except for transactions expressly authorized by this Agreement; or

- (iii) Except as set forth in this Agreement for the purposes of carrying out the Contemplated Transactions:

- (A) Take any action to, or enter into any agreement to, amend, modify or terminate the Lease or otherwise adversely affect the leasehold interests of IRMC in the Hospital Facilities; or

- (B) Take any action to, or enter into any agreement to, sell, transfer or convey the Hospital Facilities or create any Encumbrance with respect to the Hospital Facilities.

**10.2 Preserve Accuracy of Representations and Warranties.** From the Execution Date to the Closing Date:

- (a) The District will not take any action which would render any representation or warranty contained in Article 7 inaccurate or untrue as of the Closing Date.

- (b) The District will promptly notify CCF and IRMC of any lawsuits, claims, administrative actions or other proceedings asserted or commenced against the District or its trustees involving in any material way the ability of the District to consummate the Contemplated Transactions, or which would result in a Material Adverse Event.

- (c) The District will promptly notify CCF And IRMC in writing of any facts or circumstances that come to its attention and that cause, or through the passage of time may cause, any of the representations and warranties contained in Article 7 to be untrue or misleading in any material respect at any time from the Execution Date to the Closing Date.

**10.3 Access to Information.**

- (a) From the Execution Date to the Closing Date, the District will continue to give CCF and its representatives full and free access, during normal business hours, to all

properties, books, records and contracts and other materials pertaining to the businesses, properties and assets of the District, as may be reasonably requested by CCF.

(b) The District will cooperate in keeping CCF and IRMC fully informed and will promptly notify IRMC of any Material Adverse Event.

**10.4 Compliance with Laws.** From the Execution Date to the Closing Date, the District will materially comply with its Enabling Act (Chapter 2003-382, Laws of Florida), Chapter 189, Florida Statutes, Chapter 119, Florida Statutes, and Chapter 286.011, Florida Statutes.

**10.5 No Conflicting Transactions.** From the Execution Date to the Closing Date, the District will not, without the prior written consent of CCF and IRMC: (a) enter into any agreement or other transaction that would materially constrain its ability to consummate the Contemplated Transactions; and (b) explore, meet, discuss, negotiate, directly or indirectly, or enter into an agreement with any third party for the purpose of discussing, organizing, formulating, designing, developing, investing in or implementing an arrangement similar to the Contemplated Transactions.

**10.6 Third Party Authorizations.** From the Execution Date to the Closing Date, the District will use commercially reasonable efforts to obtain expeditiously all consents, approvals and authorizations of third parties, whether by Government or private Person, make all filings, and give all notices which may be necessary or appropriate under Applicable Law and under all contracts, agreements and commitments to which the District is a party or is bound, or to the extent necessary for the valid execution, delivery and performance of this Agreement by the District.

## **ARTICLE 11 PRE-CLOSING COVENANTS OF CCF**

**11.1 Interim Conduct of Business.** From the Execution Date to the Closing Date:

(a) CCF and Cleveland Clinic Florida will obtain all documents called for by this Agreement and required to facilitate the consummation of the Contemplated Transactions.

(b) Neither CCF nor Cleveland Clinic Florida will do any of the following without the prior written consent of IRMC:

(i) Make any changes, or permit any changes to be made, in its Governing Documents that are reasonably likely to adversely affect its ability to consummate the Contemplated Transactions;

(ii) Enter into any agreement involving a Change of Control of CCF or Cleveland Clinic Florida;

(iii) Enter into any agreement or transaction that is reasonably likely to adversely affect its ability to consummate the Contemplated Transactions; or

(iv) Enter into any agreement granting to a third party exclusivity, a covenant not to compete, most favored nations treatment or a right of first refusal/right of first opportunity that is reasonably likely to materially limit the operation of the IRMC System as part of the Delivery System following the Closing.

**11.2 Preserve Accuracy of Representations and Warranties.** From the Execution Date to the Closing Date:

(a) Neither CCF nor Cleveland Clinic Florida will take any action which would render any representation or warranty contained in Article 8 inaccurate or untrue as of the Closing Date.

(b) Either CCF and/or Cleveland Clinic Florida will promptly notify IRMC and the District of any lawsuits, claims, administrative actions or other proceedings asserted or commenced against CCF or Cleveland Clinic Florida, or their respective officers, directors or member involving in any material way the ability of CCF or Cleveland Clinic Florida to consummate the Contemplated Transactions.

(c) CCF and/or Cleveland Clinic Florida will promptly notify IRMC and the District in writing of any facts or circumstances that come to its attention and that cause, or through the passage of time may cause, any of the representations and warranties contained in Article 8 to be untrue or misleading in any material respect at any time from the Execution Date to the Closing Date.

**11.3 Access to Information.**

(a) From the Execution Date to the Closing Date, subject to the terms of the Confidentiality Agreement and any other agreement(s) relating to the exchange of information, CCF (and Cleveland Clinic Florida) will continue to give IRMC, the District and their representatives full and free access, during normal business hours, to all properties, books, records and contracts and other materials pertaining to the businesses, properties and assets of CCF and/or Cleveland Clinic Florida, as may be reasonably requested by IRMC and the District (and in accordance with guidelines approved by CCF's and IRMC's antitrust counsel), provided that, notwithstanding anything to the contrary contained in this Agreement, in no event will CCF or Cleveland Clinic Florida be obligated to provide IRMC or the District or their representatives such access to nonpublic information to the extent the same would result in any books, records and contracts or other materials becoming subject to Chapter 119, Florida Statutes.

(b) CCF and Cleveland Clinic Florida will cooperate in keeping IRMC and the District fully informed and will promptly notify IRMC of any Material Adverse Event.

**11.4 Compliance with Laws.** From the Execution Date to the Closing Date, CCF and Cleveland Clinic Florida will materially comply with all Applicable Law affecting CCF and Cleveland Clinic Florida.

**11.5 No Conflicting Transactions.** From the Execution Date to the Closing Date, neither CCF nor Cleveland Clinic Florida will, without the prior written consent of IRMC and the District: (a) enter into any Change of Control agreement or other transaction that would

materially constrain its ability to consummate the Contemplated Transactions; and (b) explore, meet, discuss, negotiate, directly or indirectly, or enter into an agreement with any third party for the purpose of discussing, organizing, formulating, designing, developing, investing in or implementing an arrangement that could lead to a Change of Control.

**11.6 Third Party Authorizations.** From the Execution Date to the Closing Date, CCF will use commercially reasonable efforts to obtain expeditiously all consents, approvals and authorizations of third parties, whether Government or private, make all filings, and give all notices which may be necessary or appropriate under Applicable Law and under all contracts, agreements and commitments to which CCF (or Cleveland Clinic Florida) is a party or is bound, or to the extent necessary for the valid execution, delivery and performance of this Agreement by CCF and/or Cleveland Clinic Florida.

**11.7 Confidentiality of IRMC Entities Information.** The Confidentiality Agreement will remain in full force and effect.

## **ARTICLE 12 CONDITIONS PRECEDENT TO OBLIGATIONS OF THE IRMC ENTITIES**

The obligations of the IRMC Entities to consummate the Contemplated Transactions are, at the option of IRMC, subject to the satisfaction, on or before the Closing Date, of the following conditions:

**12.1 Consents and Approvals.** All consents, authorizations, orders, approvals, filings, registrations and notices required for the consummation of the Contemplated Transactions will have been made or obtained, as applicable, on or before the Closing Date (and each such consent, authorization, order, approval, filing, registration and notice is in full force and effect as of the Closing Date), including:

(a) Hart-Scott-Rodino. CCF and IRMC will have submitted their respective filings under the HSR Act and all required waiting periods under the HSR Act will have expired or been terminated.

(b) Specific Government Approvals. The Parties will have obtained the following consents, approvals, authorizations from, or made the required filings and notices to, Government to consummate the Contemplated Transactions (“**Specific Government Approvals**”):

(i) Florida Agency for Health Care Administration licensure change of ownership;

(ii) Florida Agency for Health Care Administration Medicaid change of ownership;

(iii) Florida Radiation Safety Control change of ownership;

(iv) [Notice to the Federal Communications Commission regarding change of control of Federal Communications Commission licenses;] and

(v) [•]

(c) Third-Party Notices and Consents. Each of the other consents, approvals, authorizations, filings and notices required to be obtained or sent pursuant to Section 10.6 and Section 11.6 have been obtained or sent, as applicable.

## **12.2 Representations and Warranties.**

(a) The representations and warranties of CCF set forth in Article 8 and of the District set forth in Article 7 (disregarding all materiality qualifiers contained therein), other than Fundamental Representations, shall be true and correct as of the date hereof and as of the Closing Date as though made on and as of the Closing Date (unless made as of a specified date, in which case such representations and warranties shall be true and correct as of such specified date), except where the failure of any such representations and warranties to be true and correct in the aggregate would not reasonably be expected to prevent or materially delay the consummation of the Contemplated Transactions; and

(b) The Fundamental Representations of CCF set forth in Article 8 and of the District set forth in Article 7 shall be true and correct in all respects, if qualified by materiality, or in all material respects, if not so qualified, as of the date hereof and on and as of the Closing Date as though made on and as of the Closing Date (unless made as of a specified date, in which case such representations and warranties shall be so true and correct as of such specified date).

**12.3 Performance of Covenants.** CCF and the District, respectively, will have performed all of the obligations and complied with each and all of the covenants, agreements and conditions required to be performed or complied with by it on or before the Closing Date.

**12.4 No Pending Action.** No action or proceeding before any Government will be pending or threatened wherein an unfavorable judgment, decree or order would prevent the carrying out of this Agreement or any of the Contemplated Transactions, declare unlawful the Contemplated Transactions or cause such transactions to be rescinded.

**12.5 No Bankruptcy.** Neither CCF nor the District will (a) be in receivership or dissolution, (b) have made any assignment for the benefit of creditors, (c) have admitted in writing its inability to pay its debts as they mature, (d) have been adjudicated bankrupt or (e) have filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization or an arrangement with creditors under the federal bankruptcy law or any other similar law or statute of the United States or any state, nor will any such petition have been filed against CCF or the District.

**12.6 No Material Adverse Event.** Between the Execution Date and the Closing Date, there will have been no change, event, circumstance, occurrence or development that, individually or in the aggregate, has resulted in or would reasonably be expected to result in a Material Adverse Event with respect to CCF or to the District.

**12.7 Delivery of CCF Closing Documents.** CCF will have delivered, on or before the Closing Date, the CCF Closing Documents.

**12.8 Delivery of District Closing Documents.** The District will have delivered, on or before the Closing Date, the District Closing Documents.

**12.9 Delivery of Other Agreements.** CCF and the District will have executed and delivered all other agreements determined by the Parties to be necessary or appropriate to be entered into as of the Closing Date, relating to the Contemplated Transactions.

### **ARTICLE 13 CONDITIONS PRECEDENT TO OBLIGATIONS OF THE DISTRICT**

The obligations of the District to consummate the Contemplated Transactions are, at the option of the District, subject to the satisfaction, on or before the Closing Date, of the following conditions:

**13.1 Consents and Approvals.** All consents, authorizations, orders, approvals, filings, registrations and notices required for the consummation of the Contemplated Transactions will have been made or obtained, as applicable, on or before the Closing Date (and each such consent, authorization, order, approval, filing, registration and notice is in full force and effect as of the Closing Date), including:

(a) Hart-Scott-Rodino. CCF and IRMC will have submitted their respective filings under HSR Act, and all required waiting periods under the HSR Act will have expired or been terminated.

(b) Specific Government Approvals. The Parties will have obtained the Specific Government Approvals.

(c) Third-Party Notices and Consents. Each of the consents approvals, authorizations, filings and notices required to be obtained or sent pursuant to Section 9.7 and Section 11.6 have been obtained or sent, as applicable.

**13.2 Representations and Warranties.**

(a) The representations and warranties of CCF set forth in Article 8 (disregarding all materiality qualifiers contained therein), other than Fundamental Representations, shall be true and correct as of the date hereof and as of the Closing Date as though made on and as of the Closing Date (unless made as of a specified date, in which case such representations and warranties shall be true and correct as of such specified date), except where the failure of any such representations and warranties to be true and correct in the aggregate would not reasonably be expected to prevent or materially delay the consummation of the Contemplated Transactions;

(b) The representations and warranties of the IRMC Entities set forth in Article 6 (in each case disregarding all materiality or Material Adverse Event qualifiers contained therein), other than Fundamental Representations, shall be true and correct in all respects as of the date hereof and as of the Closing Date as though made on and as of the Closing Date (unless made as of a specified date, in which case such representations and warranties shall be true and correct as of such specified date), except where the failure of any such

representations and warranties to be true and correct in the aggregate has not resulted and would not reasonably be expected to result in a Material Adverse Event; and

(c) The Fundamental Representations of CCF set forth in Article 8 and of the IRMC Entities set forth in Article 6 shall be true and correct in all respects, if qualified by materiality, or in all material respects, if not so qualified, as of the date hereof and on and as of the Closing Date as though made on and as of the Closing Date (unless made as of a specified date, in which case such representations and warranties shall be so true and correct as of such specified date).

**13.3 Performance of Covenants.** Each of the IRMC Entities and CCF, respectively will have performed all of the obligations and complied with each of the covenants, agreements and conditions required to be performed or complied with on or before the Closing Date.

**13.4 No Pending Action.** No action or proceeding before any Government will be pending or threatened wherein an unfavorable judgment, decree or order would prevent the carrying out of this Agreement or any of the Contemplated Transactions, declare unlawful the Contemplated Transactions or cause such transactions to be rescinded.

**13.5 No Bankruptcy.** Neither any IRMC Entity nor CCF will (a) be in receivership or dissolution; (b) have made any assignment for the benefit of creditors, (c) have admitted in writing its inability to pay its debts as they mature, (d) have been adjudicated bankrupt or (e) have filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization or an arrangement with creditors under the federal bankruptcy law or any other similar law or statute of the United States or any state; and nor will any such petition have been filed against any IRMC Entity or CCF.

**13.6 No Material Adverse Event.** Between the Execution Date and the Closing Date, there will have been no change, event, circumstance, occurrence or development that, individually or in the aggregate, has resulted in or would reasonably be expected to result in a Material Adverse Event with respect to the IRMC Entities or to CCF.

**13.7 Delivery of IRMC Closing Documents.** The IRMC Entities will have delivered, on or before the Closing Date, the IRMC Closing Documents, and the Foundation will have delivered, on or before the Closing Date, the Foundation Closing Documents.

**13.8 Delivery of CCF Closing Documents.** CCF will have delivered, on or before the Closing Date, the CCF Closing Documents.

**13.9 Delivery of Other Agreements.** The IRMC Entities and CCF will have executed and delivered all other agreements determined by the Parties to be necessary or appropriate to be entered into as of the Closing Date, relating to the Contemplated Transactions.

## **ARTICLE 14 CONDITIONS PRECEDENT TO OBLIGATIONS OF CCF**

The obligations of CCF to consummate the Contemplated Transactions are, at the option of CCF, subject to the satisfaction, on or before the Closing Date, of the following conditions:

**14.1 Consents and Approvals.** All consents, authorizations, orders, approvals, filings, registrations and notices required for the consummation of the Contemplated Transactions will have been made or obtained, as applicable, on or before the Closing Date (and each such consent, authorization, order, approval, filing, registration and notice is in full force and effect as of the Closing Date), including:

(a) Hart-Scott-Rodino. CCF and IRMC will have submitted their respective filings under HSR Act, and all required waiting periods under the HSR Act will have expired or been terminated.

(b) Specific Government Approvals. The Parties will have obtained the Specific Government Approvals.

(c) Third-Party Notices and Consents. Each of the consents approvals, authorizations, filings and notices required to be obtained or sent pursuant to Section 9.7 and Section 10.6 have been obtained or sent, as applicable.

**14.2 Representations and Warranties.**

(a) The representations and warranties of the IRMC Entities set forth in Article 6 (in each case disregarding all materiality or Material Adverse Event qualifiers contained therein), other than Fundamental Representations, shall be true and correct in all respects as of the date hereof and as of the Closing Date as though made on and as of the Closing Date (unless made as of a specified date, in which case such representations and warranties shall be true and correct as of such specified date), except where the failure of any such representations and warranties to be true and correct in the aggregate has not resulted and would not reasonably be expected to result in a Material Adverse Event;

(b) The representations and warranties of the District set forth in Article 7 (disregarding all materiality qualifiers contained therein), other than Fundamental Representations, shall be true and correct as of the date hereof and as of the Closing Date as though made on and as of the Closing Date (unless made as of a specified date, in which case such representations and warranties shall be true and correct as of such specified date), except where the failure of any such representations and warranties to be true and correct in the aggregate would not reasonably be expected to prevent or materially delay the consummation of the Contemplated Transactions; and

(c) The Fundamental Representations of the IRMC Entities set forth in Article 6 and of the District set forth in Article 7 shall be true and correct in all respects, if qualified by materiality, or in all material respects, if not so qualified, as of the date hereof and on and as of the Closing Date as though made on and as of the Closing Date (unless made as of a specified date, in which case such representations and warranties shall be so true and correct as of such specified date).

**14.3 Performance of Covenants.** Each of the IRMC Entities and the District, respectively will have performed all of the obligations and complied with each of the covenants, agreements and conditions required to be performed or complied with on or before the Closing Date.



**14.4 No Pending Action.** No action or proceeding before any Government will be pending or threatened wherein an unfavorable judgment, decree or order would prevent the carrying out of this Agreement or any of the Contemplated Transactions, declare unlawful the Contemplated Transactions or cause such transactions to be rescinded.

**14.5 No Bankruptcy.** Neither any IRMC Entity nor the District will (a) be in receivership or dissolution; (b) have made any assignment for the benefit of creditors, (c) have admitted in writing its inability to pay its debts as they mature, (d) have been adjudicated bankrupt or (e) have filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization or an arrangement with creditors under the federal bankruptcy law or any other similar law or statute of the United States or any state; and nor will any such petition have been filed against any IRMC Entity or the District.

**14.6 No Material Adverse Event.** Between the Execution Date and the Closing Date, there will have been no change, event, circumstance, occurrence or development that, individually or in the aggregate, has resulted in or would reasonably be expected to result in a Material Adverse Event with respect to the IRMC Entities or to the District.

**14.7 Delivery of IRMC Closing Documents.** The IRMC Entities will have delivered, on or before the Closing Date, the IRMC Closing Documents.

**14.8 Delivery of District Closing Documents.** The District will have delivered, on or before the Closing Date, the District Closing Documents.

**14.9 Delivery of Other Agreements.** The IRMC Entities and the District will have executed and delivered all other agreements determined by the Parties to be necessary or appropriate to be entered into as of the Closing Date, relating to the Contemplated Transactions.

## **ARTICLE 15 CLOSING**

**15.1 Closing Date; Closing.** The Parties will close the Contemplated Transactions on (a) [●], 2018 at 12:01 a.m. Eastern Time, or (b) such other date agreed to by the Parties following the receipt of all regulatory approvals and satisfaction of all conditions precedent to Closing set forth herein (the “**Closing Date**”). The Closing Date will be no later than [●], 2018 (the “**Closing Deadline**”) unless the Parties otherwise agree in writing. The delivery of the documents required to be delivered on the Closing Date by the respective Parties (the “**Closing**”) will occur on the Business Day immediately before the Closing Date, at the offices of [●], or any other date or location agreed to by the Parties. All documents to be executed and actions to be taken, pursuant to this Agreement, at the Closing, will be deemed to have been executed and to have been taken substantially concurrently, and no action will be deemed to be complete until all are completed. Unless the Parties otherwise agree in writing, the Contemplated Transactions to become effective as of the Closing Date, will become so effective, provided that, as of the Closing Date, all of the Closing conditions (except for any Closing condition that has been waived in writing by all Parties entitled to do so) have occurred, including the delivery by each Party of each of the Closing documents required to be delivered by such Party hereunder.

**15.2 Closing Document Deliveries.** At the Closing, the Parties will deliver the documents described below.

(a) **CCF Closing Documents.** At the Closing, CCF will deliver the following documents (the “**CCF Closing Documents**”):

(i) A certificate of the President of CCF, dated as of the Closing Date, certifying that the conditions specified in Section 12.2 and Section 12.3 have been satisfied;

(ii) A certificate of the Secretary of CCF, dated as of the Closing Date, certifying as true and correct: (A) as of the Execution Date and as of the Closing Date the incumbency of the officers of CCF who have executed CCF Closing Documents; and (B) as of the Execution Date and as of the Closing Date, the due adoption and continued effectiveness of resolutions of the CCF Board and the Cleveland Clinic Florida Board approving the Contemplated Transactions, including the Amended Cleveland Clinic Florida Governing Documents;

(iii) Copies of the Amended Cleveland Clinic Florida Governing Documents approved by the CCF Board and the Cleveland Clinic Florida Board;

(iv) Duly executed copy of the Guaranty Agreement attached hereto as Exhibit F (the “**Guaranty Agreement**”); and

(v) Such other instruments and documents as may be reasonably necessary to carry out the Contemplated Transactions and to comply with the terms hereof.

(b) **IRMC Closing Documents.** At the Closing, IRMC will deliver the following documents (the “**IRMC Closing Documents**”):

(i) A certificate of the President and Chief Executive Officer of IRMC, dated as of the Closing Date, certifying the conditions specified in Section 14.2 and Section 14.3 have been satisfied;

(ii) Certificates of each of the Secretaries of the IRMC Entities, dated as of the Closing Date, certifying as true and correct as of the Execution Date and as of the Closing Date: (A) the incumbency of the officers of the IRMC Entity who have executed IRMC Closing Documents; (B) as of the Execution Date and as of the Closing Date, the due adoption and continued effectiveness of resolutions of the IRMC Entity Boards approving the Contemplated Transactions, including the applicable amended Governing Documents;

(iii) Resignations from each of the members of the Board of IRMC effective at 11:59 p.m. Eastern Time on the day prior to the Closing Date;

(iv) Duly executed Third Amended and Restated Agreement for Indigent Care Services between the District and IRMC in a form acceptable to CCF, IRMC and District which is effective as of the Closing Date;

(v) Duly executed Amended and Restated Partners Agreement between IRMC and District in a form acceptable to CCF, IRMC and the District which is effective as of the Closing Date;

(vi) Duly executed copy of the Amended and Restated Lease of Hospital Facilities attached hereto as Exhibit G (the “**Amended and Restated Lease**”);

(vii) Duly executed Declaration of Easements Covenants Conditions and Restrictions properly joined in and consented to by IRMC, Visiting Nurse and Hospice Foundation, Inc. and Visiting Nurse Association of the Treasure Coast Inc. pertaining to the Amended and Restated Lease in the form attached hereto as Exhibit H (the “**Declaration of Easements**”);

(viii) [**Other deliverables identified in due diligence**];

(ix) Copies of all consents approvals, authorizations, filings and notices required to be obtained or sent pursuant to Section 9.7; and

(x) Such other instruments and documents as may be reasonably necessary to carry out the Contemplated Transactions and to comply with the terms hereof.

(c) District Closing Documents. At the Closing, the District will deliver the following documents (the “**District Closing Documents**”):

(i) Resolution of the Board of Trustees of the District approving the contemplated transaction and, in particular, the Amended and Restated Lease;

(ii) Duly executed copy of the Amended and Restated Lease;

(iii) Duly executed amendment to the Foundation Agreement in the form attached hereto as Exhibit I (the “**Foundation Agreement Amendment**”);

(iv) Duly executed Amended and Restated Partners Agreement between IRMC and District in a form acceptable to CCF, IRMC and the District which amendment is effective as of the Closing Date;

(v) Duly executed Declaration of Easements; and

(vi) Such other instruments and documents as may be reasonably necessary to carry out the Contemplated Transactions and to comply with the terms hereof.

(d) Foundation Closing Documents. At the Closing, Foundation will deliver following documents (the “**Foundation Closing Documents**”):

(i) Duly executed Foundation Agreement Amendment.

## ARTICLE 16 TERMINATION

**16.1 Termination.** This Agreement may be terminated and the Contemplated Transactions may be abandoned at any time prior to the Closing:

- (a) By mutual written consent of IRMC, the District and CCF;
- (b) By CCF if:

- (i) a breach of any of the representations or warranties of the IRMC Entities set forth in Article 6 shall have occurred or if an IRMC Entity has breached any covenant or agreement set forth in this Agreement such that the condition to Closing set forth in either Section 14.2 or Section 14.3 would not be satisfied and such breach, if curable, is not cured within thirty (30) days after written notice thereof is delivered to IRMC (but in no event shall such cure period extend past the Closing Deadline);

- (ii) a breach of any of the representations or warranties of the District set forth in Article 7 shall have occurred or if the District has breached any covenant or agreement set forth in this Agreement such that the condition to Closing set forth in either Section 14.2 or Section 14.3 would not be satisfied and such breach, if curable, is not cured within thirty (30) days after written notice thereof is delivered to the District (but in no event shall such cure period extend past the Closing Deadline);

- (iii) if any Person files a complaint in federal district court or state court seeking to preliminarily restrain or enjoin the Contemplated Transactions;

- (c) By IRMC if:

- (i) a breach of any of the representations or warranties of the District set forth in Article 7 shall have occurred or if the District has breached any covenant or agreement set forth in this Agreement such that the condition to Closing set forth in either Section 12.2 or Section 12.3 would not be satisfied and such breach, if curable, is not cured within thirty (30) days after written notice thereof is delivered to the District (but in no event shall such cure period extend past the Closing Deadline); or

- (ii) a breach of any of the representations or warranties of CCF set forth in Article 8 shall have occurred or if CCF has breached any covenant or agreement set forth in this Agreement such that the condition to Closing set forth in either Section 12.2 or Section 12.3 would not be satisfied and such breach, if curable, is not cured within thirty (30) days after written notice thereof is delivered to CCF (but in no event shall such cure period extend past the Closing Deadline);

- (d) By the District if:

- (i) a breach in the representations and warranties of CCF and Cleveland Clinic Florida set forth in Article 8 shall have occurred or if CCF or Cleveland Clinic Florida has breached any covenant or agreement set forth in this Agreement such that the

conditions to Closing set forth in either Section 13.2 or Section 13.3 would not be satisfied and such breach, if curable, is not cured within thirty (30) days after written notice thereof is delivered to the CCF (but in no event shall such cure period extend past the Closing Deadline); or

(ii) a breach in the representations and warranties of the IRMC Entities set forth in Article 6 shall have occurred or if an IRMC Entity has breached any covenant or agreement set forth in this Agreement such that the condition to Closing set forth in either Section 13.2 or Section 13.3 would not be satisfied and such breach, if curable, is not cured within thirty (30) days after written notice thereof is delivered to IRMC (but in no event shall such cure period extend past the Closing Deadline).

(e) By CCF, District, or IRMC if the Contemplated Transactions shall not have been consummated on or prior to the Closing Deadline;

(f) By CCF or IRMC if any antitrust Government authority (i) issues a second request for information following submission of the Parties' pre-merger notification filings under Applicable Law with respect to antitrust, (ii) issues an administrative complaint alleging that the Contemplated Transactions violate Applicable Law with respect to antitrust, (iii) files a complaint in federal district court to preliminarily restrain or enjoin the Contemplated Transactions pending resolution of any administrative complaint alleging violations of Applicable Law with respect to antitrust, or (iv) issues an order requiring CCF or IRMC to rescind the Contemplated Transactions or divest any assets or operations;

(g) By CCF, IRMC or the District if any Applicable Law issued or enacted by any Government of competent jurisdiction which materially delays or permanently prohibits the consummation of the Contemplated Transactions, shall have become final and nonappealable; provided, that the right to terminate this Agreement pursuant to this Section 16.1(g) shall not be available to such Party whose failure (or in the case of IRMC the failure of an IRMC Entity) to act in compliance with the provisions of this Agreement has been a principal cause of such Applicable Law to have been issued; or

(h) By CCF pursuant to Section 17.2.

**16.2 Effect of Termination.** In the event of the termination of this Agreement pursuant to Section 16.1, this entire Agreement shall forthwith become void and there shall be no liability or obligation on the part of any Party, except that: (a) the terms and conditions of the Confidentiality Agreement shall survive such termination; (b) Section 17.7 shall survive such termination; and (c) no such termination shall relieve any Party from any liability for any breach of any of its obligations under this Agreement prior to such termination. Notwithstanding the foregoing, in no event shall any Party be liable for punitive or special damages.

## **ARTICLE 17 GENERAL PROVISIONS**

**17.1 Exclusive Dealings.** From and after the Execution Date until the earlier to occur of the Closing or the termination of this Agreement pursuant to Article 16:

(a) Each of IRMC and the District will not, without the prior consent of CCF, explore, meet, discuss, negotiate, directly or indirectly, or enter into an agreement with any third party for the purpose of discussing, organizing, formulating, designing, developing, investing in or implementing an arrangement that could lead to a Change of Control involving any IRMC Entity. IRMC and the District will promptly notify CCF by telephone and thereafter confirm in writing, if any such discussions or negotiations are sought to be initiated with the IRMC Entities or any such proposal or possible proposal is received directly or indirectly by any IRMC Entity. In the event an IRMC Entity or any of its representatives receives an unsolicited offer relating to a type of transaction described above, IRMC and the District will promptly inform the person or organization making such unsolicited offer of the existence of the restrictions of this Section 17.1, but not the other contents of this Agreement, and IRMC will reject such offer.

(b) Each of IRMC and the District acknowledges that a breach or threatened breach of this Section 17.1 by it would cause CCF to suffer immediate and irreparable harm that could not be fully remedied with the payment of monetary damages. As such, in addition to any other remedies available, CCF will be entitled to specific performance, preliminary and permanent injunctive relief, and other available equitable remedies to restrain a breach or threatened breach of this Section 17.1 by IRMC or the District, either pending or following a trial on the merits, and without the need to post bond or other security.

**17.2 Modification of Schedules.** During the period from the Execution Date to the date that is ten Business Days before the Closing Date, the IRMC Entities may qualify any of its representations and warranties herein pursuant to an amendment to any one or more of the Schedules it delivered at the Execution Date, to reflect newly occurring events or newly discovered information by delivering, in accordance with Section 17.6, one or more amended Schedules (each, an “**Amended Schedule**” and, collectively, the “**Amended Schedules**”) to CCF. Upon receipt of an Amended Schedule, CCF will have five Business Days to request additional information concerning the facts underlying the Amended Schedule. Within five Business Days after obtaining additional information, CCF may, if it reasonably determines that the item set forth in the amendment is a Material Adverse Event that cannot be cured, give notice to the IRMC Entities to this effect and terminate this Agreement. If CCF reasonably determines that the item set forth in the amendment is a Material Adverse Event that can be cured, then CCF shall give notice to the IRMC Entities and such notice shall constitute a notice of a breach of a covenant in this Agreement by the IRMC Entities subject to the cure and termination rights set forth in Section 16.1(b). If CCF reasonably determines that the item set forth in the amendment is a not a Material Adverse Event or CCF fails to give timely notice that the item set forth in the amendment is a Material Adverse Event, then such amendment shall be deemed accepted and the Amended Schedule shall be an “**Approved Amended Schedule**” for purposes hereof.

**17.3 Survival.** Article 1, Article 2, Article 3, Article 4 Article 5, Article 17 and the Confidentiality Agreement will survive the Closing and consummation of the Contemplated Transactions, but all other provisions hereof will be extinguished upon the Closing and consummation of the Contemplated Transactions and will not survive such Closing and consummation. Without limiting the generality of the foregoing, the representations and warranties of the Parties set forth in Article 6, Article 7 and Article 8 will be extinguished upon the Closing and consummation of the Contemplated Transactions, and will not survive such Closing and consummation.

**17.4 Performance of Undertakings.** Subject to fulfillment of the conditions precedent set forth in Article 12, Article 13 or Article 14 with respect to the relevant Party, the standard that will apply to the Parties' performance of all covenants and undertakings contained in this Agreement and in any and every document executed and delivered hereunder is a commercially reasonable standard, unless expressly designated as otherwise.

**17.5 Consummation of Transactions.** Subject to fulfillment of the conditions precedent set forth in Article 12, Article 13 or Article 14 with respect to the relevant Party, the Parties will take, or cause their Affiliates to take, no other action that is inconsistent with its obligations hereunder or which could materially delay the consummation of the Contemplated Transactions.

**17.6 Notices.** All notices, requests, demands and other communications under this Agreement will be in writing and will be deemed to have been duly given or made as follows: (a) if sent by registered or certified mail in the United States return receipt requested, upon receipt; (b) if sent designated for overnight delivery by nationally recognized overnight air courier (such as Federal Express, UPS or DHL), one Business Day after mailing; (c) if sent by facsimile transmission before 5:00 p.m. (sender's time) and receipt is confirmed through a delivery report; (d) if sent by facsimile transmission after 5:00 p.m. (sender's time) and receipt is confirmed through a delivery report, on the following Business Day; and (e) if otherwise actually personally delivered, when delivered, provided that such notices, requests, demands and other communications are delivered to the addresses set forth below, or to such other address as any Party will provide by like notice to the other Party:

CCF and  
Cleveland Clinic Florida:

The Cleveland Clinic Foundation  
9500 Euclid Avenue  
Cleveland, OH 44195  
Attn: Tomislav Mihaljevic  
Fax: (216) 444-0088

With a simultaneous copies  
(not constituting notice) to:

[●]  
[●]  
[●]  
Attn: [●]  
Fax: [●]

Any IRMC Entity:	Indian River Medical Center 1000 36th St. Vero Beach, FL 32960 Attn: Board Chair Facsimile: (772) 562-5628
With a simultaneous copy (not constituting notice) to:	Katten Muchin Rosenman 525 West Monroe Street Chicago, IL 60661-3693 Attn: D. Louis Glaser Fax: (312) 902-1061
The District:	Indian River County Hospital District 3730 7th Terrace, Suite 204-B Vero Beach, FL 32960 Attn: Board Chair Facsimile: (772) 770-1974
With a simultaneous copy (not constituting notice) to:	GrayRobinson, P.A. 301 E. Pine Street, Suite 1400 Orlando, FL 32801 Attn: William A. Boyles Fax: (407) 244-5690

**17.7 Costs of Transaction.** Except as otherwise provided in this Section, whether or not the Contemplated Transactions will be consummated: (a) CCF will pay the fees, expenses, and disbursements of CCF and its agents, representatives, accountants, and legal counsel incurred in connection with the subject matter hereof and any amendments hereto; (b) IRMC will pay the fees, expenses, and disbursements of the IRMC Entities and their agents, representatives, accountants, and legal counsel incurred in connection with the subject matter hereof and any amendments hereto; and (c) the District will pay the fees, expenses, and disbursements of the District and its agents, representatives, accountants, and legal counsel incurred in connection with the subject matter hereof and any amendments hereto. Notwithstanding the foregoing, CCF will pay the filing fees required under the HSR Act for itself and IRMC.

**17.8 Entire Agreement; Amendment.** This Agreement, including all Schedules and Exhibits required hereunder, supersedes all previous agreements, including the Letter of Intent but excluding the Confidentiality Agreement, oral or written, and constitutes the entire agreement among the Parties respecting the subject matter of this Agreement, and no Party will be entitled to benefits other than those specified herein. Each Exhibit and Schedule referenced in this Agreement will be considered a part hereof as if set forth herein in full. As among the Parties, oral statements or prior written materials that are not specifically incorporated herein will not be of any force and effect. The Parties specifically acknowledge that in entering into and executing this Agreement, the Parties rely solely upon the representations and agreements contained in this Agreement and no others. This Agreement may be amended or modified only by an agreement in writing signed by all Parties.



**17.9 Non-Assignment.** This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors, assigns and legal representatives, but no Party may assign its rights or obligations in this Agreement or delegate its duties under this Agreement to a third party by any means without first obtaining the prior written consent of the other Parties.

**17.10 No Third Party Beneficiaries.** This Agreement does not confer any rights or remedies upon any person or other third party other than the Parties and their respective successors and permitted assigns.

**17.11 Additional Assurances.** The provisions of this Agreement will be self-operative and will not require further agreement by the Parties except as may be herein specifically provided to the contrary; *provided, however, that* at the request of a Party, the other Parties will execute such additional instruments and use commercially reasonable efforts to take such additional actions as the requesting Party may deem reasonably necessary to effectuate this Agreement. Additionally, each Party will cooperate and use its commercially reasonable efforts to have its present directors, officers and employees cooperate with the other Parties on and after Closing in furnishing information, evidence, testimony and other assistance in connection with any action, proceeding, arrangement or dispute of any nature with respect to matters pertaining to all periods before Closing in respect of the items subject to this Agreement; *provided that* each Party will pay the reasonable out of pocket costs incurred by its respective directors, officers and employees.

**17.12 Severability.** In the event any provision of this Agreement is held to be invalid, illegal or unenforceable, in whole or in part, for any reason and in any respect, such invalidity, illegality, or unenforceability will in no event affect, prejudice or disturb the validity of any remaining provision of this Agreement, which will be and remain in full force and effect, and binding and enforceable in accordance with its terms.

**17.13 Applicable Law.** This Agreement will be governed by and construed and enforced in accordance with the laws of the State of Florida; *provided, however, that* the conflicts of law principles of the State of Florida will not apply to the extent they would operate to apply the laws of another state. The Parties hereby consent to the jurisdiction of Florida courts over all matters relating to this Agreement, and venue shall be in the Federal or State Courts serving Indian River County, Florida.

**17.14 Headings; Cross-References.** Headings of Articles and Sections in this Agreement and the table of contents hereof are solely for convenience or reference, do not constitute a part hereof and will not affect the meaning, construction or effect hereof. Unless indicated otherwise, references in this Agreement to Articles, Sections, Schedules and Exhibits are to articles, sections, schedules and exhibits of this Agreement.

**17.15 Construction.**

(a) Each Party has engaged independent legal counsel and independent advisors to provide advice and guidance to such Party. This Agreement and all documents or instruments delivered pursuant hereto will be construed without regard to the identity of the Person who drafted the various provisions of the same. Each and every provision of this

Agreement and such other documents and instruments will be construed as though the Parties participated equally in the drafting of the same. Consequently, any rule of construction that a document is to be construed against the drafting Party will not be applicable to this Agreement.

(b) All references in this Agreement to sections, articles, exhibits, schedules and attachments will be deemed references to the sections, articles, exhibits, schedules and attachments of this Agreement. No heading or title of any section, article, exhibit, schedule or attachment will be utilized in the interpretation or construction of this Agreement. Words used herein indicating gender will be deemed to include any other gender. The word “including” will be deemed to introduce a non-exhaustive and non-limiting list. Any reference to an agreement or contract will be deemed to include all amendments and modifications thereof.

(c) Unless otherwise agreed in writing by CCF, when a reference is made to certain documents or information being made available to, or delivered or provided to, CCF, such documents or information shall be deemed to have been made available, delivered or provided only if they have been (i) included in the Citrix ShareFile electronic data room established by IRMC or its representatives; (ii) included in the Citrix Storefile Electronic Data Room established by the District or its representatives; (iii) received by regular mail, email, flash drive, disk or other electronic transmission by CCF or its representatives, in each case, at least three Business Days prior to the Execution Date; or (iv) provided to CCF or its representatives for review during an in-person meeting or site visit.

**17.16 Waiver of Terms.** The failure of any Party to insist, in any one or more instances, on performance of any of the terms, covenants and conditions of this Agreement will not be construed as a waiver or relinquishment of any rights granted hereunder or thereunder or of the future performance of any such term, covenant or condition, but the obligations of the Parties with respect thereto will continue in full force and effect. A waiver by one Party of the performance of any covenant, condition, representation or warranty of the other Party will not invalidate this Agreement, nor will such waiver be construed as a waiver of any other covenant, condition, representation or warranty. A waiver by any Party of the time for performing any act will not constitute a waiver of the time for performing any other act or the time for performing an identical act required to be performed at a later time.

**17.17 Counterparts; Signatures.** This Agreement may be executed in multiple originals, each of which will be considered an original for all purposes and, collectively, will be considered to constitute this Agreement. Signatures transmitted by facsimile or in Portable Document Format (pdf) may be considered an original for all purposes, including the execution of this Agreement and enforcement of this Agreement.

**17.18 Time is of the Essence.** Time is hereby expressly made of the essence with respect to each and every term and provision of this Agreement and any other agreements determined by the Parties to be necessary or appropriate to be entered into in connection with the Contemplated Transactions.

**17.19 Access to Records and Information.** If and to the extent applicable to this Agreement and to any agreement contemplated hereunder or entered into pursuant hereto between or among the Parties, the Parties will comply with the requirements of Public Law 96

499, Section 952 (Section 1861(v)(1)(I) of the Social Security Act) and regulations promulgated thereunder.

**17.20 Waiver of Trial by Jury.** EACH PARTY HEREBY WAIVES ITS RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING IN CONNECTION WITH ANY MATTER RELATING TO THIS AGREEMENT.

**17.21 Publicity.** Except as otherwise required by Applicable Law, permitted by this Agreement or required to be included in notices to and other filings with Government that are required to effect the Contemplated Transactions, each of the Parties will consult with one another before disclosing to any third-party any terms of this Agreement or the other agreements, documents and instruments delivered by the Parties at the Closing pursuant to this Agreement unless otherwise required by law including, but not limited to, Chapter 119, Florida Statutes. The Parties will cooperate in preparing and releasing joint announcements concerning this Agreement and its execution to all appropriate communities, groups and ratings agencies. In addition, the Parties will coordinate the timing and messaging of communications concerning this Agreement to their respective employee and medical staff communities and leadership.

**17.22 Public Records Law.** The parties understand that the District is subject to the Florida Public Records Law, Ch. 119, Florida Statutes, and the Government-in-the-Sunshine Act, Section 289.011, Florida Statutes, and as such all information and documents provided to it will be subject to disclosure unless otherwise exempted by Florida law from compliance with such laws.

[Remainder of page left intentionally blank]

[signature page to Member Substitution Agreement]

IN WITNESS WHEREOF, the Parties, acting through their duly authorized representatives, have executed this Member Substitution Agreement as of the Execution Date.

THE CLEVELAND CLINIC FOUNDATION

CLEVELAND CLINIC FLORIDA (A  
NONPROFIT CORPORATION)

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

INDIAN RIVER MEMORIAL  
HOSPITAL, INC.

INDIAN RIVER HOSPITAL  
FOUNDATION, INC.

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

INDIAN RIVER HEALTH SERVICES  
CORPORATION

HEALTH SYSTEMS OF INDIAN  
RIVER, INC.

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

VERO RADIOLOGY ASSOCIATES, LLC

EMERGENCY PHYSICIANS OF VERO  
BEACH, LLC

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

INDIAN RIVER MEDICAL  
ASSOCIATES LLC

By: \_\_\_\_\_  
Name:  
Title:

INDIAN RIVER COUNTY HOSPITAL  
DISTRICT

By: \_\_\_\_\_  
Name:  
Title: