

**THIRD AMENDED AND RESTATED
AGREEMENT FOR INDIGENT CARE SERVICES BETWEEN
INDIAN RIVER COUNTY HOSPITAL DISTRICT
AND
INDIAN RIVER MEMORIAL HOSPITAL, INC.**

THIS THIRD AMENDED AND RESTATED AGREEMENT FOR INDIGENT CARE SERVICES (this “Agreement” or “Third Amended and Restated Agreement”), is made this ____ day of _____, 201__ (the “Effective Date”) by and between **INDIAN RIVER COUNTY HOSPITAL DISTRICT**, an independent special taxing district of the State of Florida, hereinafter referred to as **DISTRICT**, and **INDIAN RIVER MEMORIAL HOSPITAL, INC.**, a Florida not-for-profit corporation, hereinafter referred to as **MEDICAL CENTER** (collectively, “Parties”).

RECITALS

WHEREAS, **DISTRICT** and **MEDICAL CENTER** have entered into the Amended and Restated Lease Agreement dated as of _____ (the “Lease”), wherein **MEDICAL CENTER** leased the facilities of Indian River Memorial Hospital from **DISTRICT** and agreed to manage and operate such facilities during the term of the Lease;

WHEREAS, pursuant to Chapter 61-2275, Laws of Florida, as amended and as codified at Chapter 2003-382, Laws of Florida (“Special Act”), **DISTRICT** has, inter alia, an obligation to prudently assess and raise taxes in order to support medical care to the indigent sick of **DISTRICT**, many of whom are treated by **MEDICAL CENTER**;

WHEREAS, **DISTRICT** wishes to make reasonable efforts to provide that the indigent sick of **DISTRICT** receive proper medical care, health care, hospitalization, emergency care, and

similar medical and hospital services as are customarily provided by a full service general acute care hospital;

WHEREAS, DISTRICT has determined that it is in the best interest of the citizens and taxpayers of Indian River County to enter into this Agreement with MEDICAL CENTER;

WHEREAS, DISTRICT and the MEDICAL CENTER acknowledge that all obligations of the DISTRICT related to funding indigent care pursuant to prior versions of this Agreement have been fulfilled and the terms of all prior version of this Agreement between the parties have been fully complied with up to and including the date of this Agreement;

WHEREAS, commencing on December 13, 1984, the Parties entered into an agreement regarding the provision of indigent care services by MEDICAL CENTER and the payment thereof by the DISTRICT, which agreement has been amended on numerous occasions; and

WHEREAS, the Parties, by the adoption of this Agreement, are amending and completely restating said prior agreements, and all amendments thereto.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises contained in this Agreement, the sufficiency of which is acknowledged, the Parties intending to be legally bound, agree as follows:

I. Incorporation of Introductory Material.

The foregoing introductory paragraph and recitals (including the definitions contained in each) are incorporated into the body of this Agreement.

II. Definitions.

A. **Indigent Resident** means, for the purpose of payment for medical care under this Agreement, those individuals eligible for receipt of medical care at reduced charge or at no

charge, as determined by MEDICAL CENTER in accordance with the eligibility determination standards adopted by MEDICAL CENTER from time to time. A copy of the current MEDICAL CENTER Financial Assistance Policy, including its eligibility determination standards, is attached hereto as Exhibit A (the “Medical Center Financial Assistance Policy”).

B. **Inpatient Charges** means charges assigned to inpatient services provided to each qualifying Indigent Resident using MEDICAL CENTER’s inpatient charges consistently applied.

C. **Outpatient Charges** means charges assigned to outpatient services provided to each qualifying Indigent Resident using MEDICAL CENTER’s outpatient charges consistently applied to all patients.

D. **Third Party** means any individual, entity or program that is or may be liable to pay all or a part of MEDICAL CENTER’S cost of care, treatment or maintenance of an ill or injured person for whom MEDICAL CENTER has received payment pursuant to this Agreement, including, but not limited to, an insurance company, health maintenance organization, self-funded employer, multiple employer trust, union trust, workers compensation carrier, tortfeasor, insurer of a tortfeasor, or government entity, including Medicare and Medicaid.

E. **Third Party Payment or Benefit** means any funds or benefits available at any time through contract, court judgment, settlement agreement, or any other arrangement between the Third Party and the person for whom MEDICAL CENTER has received payment under this Agreement for MEDICAL CENTER’s cost of care, treatment or maintenance arising out of illness or injury to such person.

III. Indigent Care Obligations.

In consideration for the reimbursement to MEDICAL CENTER by DISTRICT for medical care rendered by MEDICAL CENTER to Indigent Residents of DISTRICT under Article V below, MEDICAL CENTER, within the limits of its equipment, facilities, medical staff shall provide Indigent Residents of DISTRICT with medical care in a manner and to an extent which is at least consistent with the obligations of DISTRICT under Section 19 of the Special Act, with respect to a hospital established under the Special Act, and which conforms to the provisions of the Florida Healthcare Responsibility Act, Sections 154.301 through 154.316, *Florida Statutes*, as amended, and the provisions of the Medical Center Financial Assistance Policy. Except as may otherwise be required under applicable federal or state law, it is understood that MEDICAL CENTER has the right to refuse admittance of patients because of lack of facilities or services or to protect the welfare of patients already admitted and to adopt and amend from time to time appropriate rules respecting admission of patients. MEDICAL CENTER has no responsibility to incur costs or charges for medical care rendered to Indigent Residents by other health care providers.

IV. Indigent Residents of DISTRICT.

The determination of whether an individual qualifies as an Indigent Resident of the DISTRICT for the purpose of receiving medical care at reduced charge or at no charge to the Patient shall be made by MEDICAL CENTER based upon the Eligibility Criteria, the Medical Center Financial Assistance Policy, and applicable laws that exist from time to time.

V. Payment for Indigent Care.

A. In consideration of MEDICAL CENTER's provision of service to Indigent Residents under Article III, DISTRICT agrees annually to appropriate funds ("Annual

Appropriation”) to reimburse MEDICAL CENTER for a portion of its expenses in the treatment of Indigent Residents in an amount not to exceed fifteen million dollars (\$15,000,000.00) that is payable in equal monthly installments of five hundred thousand dollars (\$500,000.00) (the “Monthly Amount”). The first Monthly Amount shall be paid on the last day of the month next following the month in which the Effective Date occurs and on the last day of each month thereafter until the final Monthly Payment is made. DISTRICT and MEDICAL CENTER acknowledge that funds for the period beginning on the Effective Date and ending on the DISTRICT’s fiscal year ending September 30, 2019 have already been appropriated and further acknowledge that MEDICAL CENTER has received payments under a prior version of this Agreement for such fiscal year and shall continue to be entitled to receive any payment(s) under a prior version of this Agreement that has not been paid as of the Effective Date. Subsequent Annual Appropriations shall occur for DISTRICT’s fiscal year commencing on October 1 of each year thereafter.

On or before April 30 of each calendar year, MEDICAL CENTER shall develop and present to DISTRICT its proposed budget for indigent care. MEDICAL CENTER shall include an explanation of the methodology and assumptions upon which the budget is based and shall be available to meet with DISTRICT to discuss any questions or concerns that DISTRICT may have regarding the budget.

MEDICAL CENTER understands and agrees that these amounts are intended to fund a portion of its indigent care budget and it shall be responsible for the unfunded portion of such budget.

B. DISTRICT shall pay MEDICAL CENTER the Monthly Amount for health and medical services provided for those persons qualified as Indigent Residents by MEDICAL CENTER. During each calendar month during the term of this Agreement, MEDICAL CENTER shall submit an indigent care analysis based on qualifying indigent care rendered by MEDICAL CENTER during the preceding calendar month. In the event MEDICAL CENTER Inpatient Charges and Outpatient Charges for Indigent Residents in a fiscal year of DISTRICT are less than the amounts paid to MEDICAL CENTER during such fiscal year set forth in Article V.A. above, MEDICAL CENTER shall promptly reimburse to DISTRICT any excess of such amount over such charges.

C. Payments shall be made by DISTRICT to MEDICAL CENTER from the resources of DISTRICT from time to time available and shall not be deemed to constitute a lien or claim upon the tax revenue of DISTRICT or obligate DISTRICT to levy a tax.

D. During the term of this Agreement, MEDICAL CENTER shall pay any assessment levied or to be levied against MEDICAL CENTER under the Public Medical Assistance Act, Sections 395.701 et. seq., *Florida Statutes*, or any similar law now in effect or hereinafter enacted imposing assessments against hospitals to defray the expense of rendering health care to indigents in the State of Florida.

E. MEDICAL CENTER shall use best efforts to ascertain if each patient is eligible for any Third Party Payment or Benefit of any kind and, if so, MEDICAL CENTER shall attempt to collect in full the amounts eligible for expenses incurred by MEDICAL CENTER in treating Indigent Residents. Additionally, if any Third Party Payment or Benefit becomes available at any time through contract, court judgment, settlement agreement or any other arrangement between a Third Party and a person for whom MEDICAL CENTER has received

payment pursuant to the terms of this Agreement, MEDICAL CENTER shall use best efforts to recover the amount due for MEDICAL CENTER services from the Third Party. Third Party Payments or Benefits for MEDICAL CENTER services shall be the primary source of payment. The Eligibility Criteria shall determine the accounting for collections from Third Parties and the requirements for an individual to qualify as an Indigent Resident for collections purposes.

F. Except as specifically stated in this Agreement, payments made by DISTRICT to MEDICAL CENTER shall be for the use and benefit of MEDICAL CENTER and no other party shall have any claim thereto, nor shall such payments reduce the liability of any Third Party to DISTRICT or MEDICAL CENTER for services rendered to an Indigent Resident of DISTRICT by MEDICAL CENTER. Amounts paid to MEDICAL CENTER pursuant to this Agreement are in furtherance of DISTRICT's mission to provide medical care to the Indigent Residents and thus they are limited to the amounts owed by Indigent Residents after payment of any Third Party Payments or Benefits.

G. On or before March 1 of each year:

1. MEDICAL CENTER shall at MEDICAL CENTER's sole cost and expense, within five (5) business days of receipt by MEDICAL CENTER, provide to DISTRICT a copy of its audited financial statement, inclusive of all management letters for the prior fiscal year, and a copy of the auditor's report and opinion on the consolidated financial statements of MEDICAL CENTER and subsidiaries.

2. MEDICAL CENTER shall render a complete report to DISTRICT of all charges to and collections from Indigent Residents for the prior fiscal year and collections of Third Party Payments and Benefits for the prior fiscal year.

H. 1. In the event that MEDICAL CENTER intends to add a new program or service for the diagnosis, treatment or care of sick or injured persons, or to change materially an existing program or service, MEDICAL CENTER shall initially determine whether said new or changed program or service will have a significant impact on the cost to MEDICAL CENTER of rendering health care to the Indigent Residents of DISTRICT. In the event that MEDICAL CENTER makes such a determination, it shall so advise DISTRICT to enable DISTRICT to assess the impact of such program or service on indigent care in Indian River County, Florida.

2. In the event that MEDICAL CENTER intends to change the Medical Center Financial Assistance Policy, MEDICAL CENTER shall notify DISTRICT in writing of such intended change at least ninety (90) days prior to the effective date of such change and permit the DISTRICT to comment on any proposed change.

I. MEDICAL CENTER shall use its best efforts to comply with all applicable Medicare and Medicaid laws, regulations, rulings, and judicial or administrative interpretations of same.

J. MEDICAL CENTER shall use its best efforts to maintain and operate the facilities through which it delivers medical care to Indigent Residents in material compliance with applicable State and Federal laws and regulations promulgated pursuant thereto.

K. In consideration of payment for indigent care in accordance with Article V above, MEDICAL CENTER, within the limits of its equipment, facilities and medical staff, shall provide a level and variety of acute care services, as required by the Lease.

VI. Term of Agreement.

This Agreement shall remain in full force and effect beginning on the Effective Date and ending upon delivery of the last Monthly Payment by DISTRICT to MEDICAL CENTER.

VII. Covenants and Representations of MEDICAL CENTER.

MEDICAL CENTER represents and covenants that it is a not-for-profit charitable organization skilled in the operation and management of a full-service acute care hospital. MEDICAL CENTER represents and covenants that it shall meet the qualifications and standards set forth in this Agreement throughout the Term.

A. MEDICAL CENTER is a not-for-profit corporation duly organized and existing under and by virtue of the laws of Florida.

B. MEDICAL CENTER is organized and operated as a charitable organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, MEDICAL CENTER shall conduct its business and activities in a manner that will at all times maintain and preserve its existence as a not-for-profit corporation with authority to do business in the State of Florida and as a tax-exempt entity under the Internal Revenue Code of 1986, as amended, and all corresponding regulations now or hereafter enacted, and will take no action or suffer any action to be taken by others which will alter, change or destroy its status as a corporation recognized as tax-exempt under the Internal Revenue Code of 1986, as amended,

C. MEDICAL CENTER is presently certified as a provider of services under the Medicare and Medicaid programs and will continue to be organized and operated so as to keep in effect its provider agreements with both the Medicare and Medicaid programs and to maintain such certification.

D. MEDICAL CENTER is presently certified by the Joint Commission f/k/a the Joint Commission on Accreditation of Healthcare Organizations and the Joint Commission on Accreditation of Hospitals and will continue to be organized and operated so as to maintain such certification.

E. MEDICAL CENTER is presently licensed to operate a hospital pursuant to Chapter 395, Florida Statutes, and will continue to be organized and operated so as to maintain such licensure.

F. MEDICAL CENTER is empowered to provide hospital services under the laws of Florida and is duly incorporated and in good standing under the laws of Florida as a not-for-profit corporation, is not in violation of any provisions of its charter or articles of incorporation or its bylaws and has power to enter into this Agreement and to carry out the obligations it has agreed to perform. By proper corporate action of its Board of Directors, MEDICAL CENTER has duly authorized the execution and delivery of this Agreement.

G. In the event that MEDICAL CENTER becomes aware that any one or more of the covenants and representations made in this Article VII is no longer accurate, MEDICAL CENTER will notify DISTRICT within ten (10) business days.

VIII. Covenants and Representations of DISTRICT.

DISTRICT represents and covenants that the person or persons executing this Agreement for or on behalf of DISTRICT are authorized and empowered to enter into this Agreement for and on behalf of DISTRICT.

IX. Default.

The failure by either DISTRICT or MEDICAL CENTER to do or perform any substantial act required of such party by the terms of this Agreement, the material breach of either party of its covenants and representations made under this Agreement, or the failure of DISTRICT to make any payment required hereunder on or before its due date, time being of the essence, shall constitute a default of the obligations of such party under this Agreement. If any proceedings in bankruptcy or insolvency are filed against MEDICAL CENTER or if any writ of

attachment or writ of execution is levied upon MEDICAL CENTER and such proceedings or levies are not released or dismissed within sixty (60) days thereafter, or if MEDICAL CENTER makes an assignment for the benefit of creditors or voluntarily institutes bankruptcy or insolvency proceedings, then any such act shall constitute a default on the part of MEDICAL CENTER under this Agreement.

X. Curing of Defaults.

Whenever MEDICAL CENTER or DISTRICT takes an action or fails to act and such action or failure to act constitutes a material default of the obligations of such party under this Agreement, the party not in default shall give the defaulting party written notice within which to cure such default (“Notice of Default”). Such Notice of Default shall be set forth with specificity and describe in detail both the reasons why the non-defaulting party believes that the defaulting party has materially breached the terms and conditions of this Agreement and the proposed resolution for curing such default. The party not in default shall grant the defaulting party a period of ninety (90) days from and after receipt of such notice within which to cure such default. If the default specified is not the failure to pay money and it is not possible to correct such default within such ninety (90) day period, then such period shall be extended from time to time as long as the defaulting party exercises and continues to exercise due diligence to remedy such default. The giving of such written notice of default and the granting of such period within which to cure such default shall be a condition precedent to the exercise of any other right or remedy by the party not in default.

XI. Remedies.

In the event that either party shall become in default of its obligations under this Agreement, and in the further event that such party shall fail to cure such default within the time

provided therefor by the provisions of Article X of this Agreement, then upon the expiration of the period provided therein for the curing of such default, the party not then in default under this Agreement may, at its option, exercise such remedies as are available to it in either law or equity.

XII. Continuing Obligation to Keep DISTRICT and MEDICAL CENTER Informed.

The Parties agree that their relationship will be enhanced and the possibility of misunderstandings or disputes will be reduced if they communicate on a regular basis. In particular, MEDICAL CENTER acknowledges the importance in keeping DISTRICT informed relative to the services it is providing. MEDICAL CENTER will promptly notify DISTRICT prior to any significant change(s) in the delivery of the services. DISTRICT, similarly, shall keep MEDICAL CENTER informed with regard to any of the DISTRICT's operations related to the health and medical care of Indigent Residents that affect MEDICAL CENTER.

XIII. Books and Records.

MEDICAL CENTER agrees during the Term of this Agreement to the following:

A. To maintain books, records, and documents (including electronic storage media) in accordance with standard accounting procedures and practices which reflect all payments to MEDICAL CENTER by DISTRICT under this Agreement.

B. To maintain records pertaining to this Agreement or payments received by MEDICAL CENTER from DISTRICT for a period of five (5) years after the termination of this Agreement.

C. Pursuant to Section 1861(v)(1)(I) of the Social Security Act (the Act) and to the extent applicable to this Agreement, until the expiration of four (4) years after termination of this Agreement, MEDICAL CENTER shall make available, upon written request of the Secretary or

upon request of the Controller General or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the costs of the services provided by MEDICAL CENTER under this Agreement. If MEDICAL CENTER carries out any of its duties under this Agreement through a subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period, such subcontract shall contain a provision that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the subcontractor shall make available, upon written request, to the Secretary, the Controller General or any of their duly authorized representatives, a copy of the subcontract and such books, documents and records as are necessary to verify the nature and extent of the costs of providing the services pursuant to the subcontract. The terms and conditions of this Article XIII.C. shall survive expiration or other termination of this Agreement, regardless of the cause of such expiration or termination.

D. To include the aforementioned audit and record-keeping requirements above in all approved sub-contracts and assignments of MEDICAL CENTER's rights under this Agreement.

XIV. Mutual Covenant. The DISTRICT and the MEDICAL CENTER agree and acknowledge that each has fully complied and performed its obligations and covenants to fund indigent care in prior versions of this Third Amended and Restated Agreement for all periods of time up to and including the date of this Third Amended and Restated Agreement. As such, each of the DISTRICT and the MEDICAL CENTER hereby release any and all claims, rights, demands, benefits, damages (compensatory, liquidated or punitive), attorneys' fees, or costs that one may have against the other as a result of or arising out of prior versions of this Third Amended and Restated Agreement from the beginning of time up to and including the date of this Third Amended and Restated Agreement.

XV. Non-Waiver.

The failure of either party to insist upon strict performance of any of the terms, conditions and covenants hereunder by the other shall not be deemed to be a waiver of any rights or remedies that such party may have and shall not be deemed a waiver of any breach or default in the terms, conditions and covenants herein contained except as may be expressly waived by such party in writing.

XVI. Applicable Law, Venue and Remedies.

This Agreement shall be interpreted and construed in accordance with the Laws of Florida and venue for any litigation commenced relating to this Agreement shall be in Indian River County, Florida.

XVII. Amendments.

Notwithstanding anything contained in this Agreement to the contrary, in accordance with Section 155.40(18), *Florida Statutes*, DISTRICT shall have the right, to be exercised in its sole and absolute discretion upon twelve (12) months' prior written notice to MEDICAL CENTER, to modify this Agreement in any respect including the provisions of Article V.A. or terminate this Agreement. Provided, however, any amounts payable by DISTRICT from an Annual Appropriation enacted prior to the effective date of such modification or termination shall be paid in accordance with the Annual Appropriation.

XVIII. Assignment.

MEDICAL CENTER shall be prohibited from sub-contracting, selling, assigning, or otherwise transferring its interest in this Agreement to any other person, governmental entity, firm or corporation except upon prior written agreement of DISTRICT, which DISTRICT may withhold in its sole discretion.

XIX. Severability.

In the event that any one or more of the provisions or the terms of this Agreement shall for any reason be held to be unenforceable in any respect, such unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such unenforceable provision had never been contained herein.

XX. Sovereign Immunity.

This Agreement shall not be construed as constituting a waiver of any rights to sovereign immunity granted to DISTRICT under the Laws or Constitution of Florida, This Agreement shall not be construed as granting or extending the sovereign immunity to which DISTRICT is entitled to MEDICAL CENTER or any other third party.

XXI. Notices.

All notices, including changes in the following addresses, required to be given pursuant to this Agreement shall be given by mail, certified or registered, and return receipt requested, or by personal delivery, evidenced by a receipt signed by the recipient of such personal delivery, and shall be effective when received. If to DISTRICT, address to the Executive Director of the DISTRICT at 3730 Seventh Terrace, Suite 204-B, Vero Beach, Florida 32960. If to MEDICAL CENTER, address to the _____.

XXII. Non-Waiver of Remedies.

No remedy provided for in this Agreement and conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy in law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy shall preclude any other or further exercise thereof.

XXIII. Public Entity Crimes.

MEDICAL CENTER shall promptly advise DISTRICT if it becomes aware of a violation of Section 287.133, *Florida Statutes*, by one of its agents, officers, directors, executives or employees who are active in the management of MEDICAL CENTER.

XXIV. Time.

Time is of the essence in all respects under this Agreement.

XXV. Conflicts between Agreements.

The Parties have separately entered into the Lease. The terms of the Lease remain in full force and effect and are not modified by the terms of this Agreement. This Agreement does not supersede either party's rights or obligations under the Lease.

XXVI. Entire Agreement.

This Agreement contains all the terms and conditions agreed upon by the Parties with respect to the subject matter of this Agreement. No other agreements regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto. The recitals and the introductory paragraphs (including the definitions contained in each) are incorporated into the body of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officials, on the dates indicated below.

**INDIAN RIVER COUNTY HOSPITAL
DISTRICT**

Witness

By: _____
Mary Beth Cunningham, Chairperson

Witness

Dated: _____

(SEAL)

ATTEST:
By: _____
Ann Marie McCrystal, Secretary

**INDIAN RIVER MEMORIAL
HOSPITAL, INC.**

Witness

By: _____
Name: _____
Title: _____

Witness

Dated: _____

(SEAL)

ATTEST:
By: _____
Name: _____
Title: _____

EXHIBIT A

Medical Center Financial Assistance Policy