

**RESOLUTION NO. 2018-06**  
of the  
**BOARD OF TRUSTEES OF THE INDIAN RIVER COUNTY HOSPITAL DISTRICT**  
to approve  
**A FIRST AMENDMENT TO THE AGREEMENT REGARDING RETURN OF  
GRANTED FUNDS CONCERNING  
THE INDIAN RIVER HOSPITAL FOUNDATION, INC.**

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

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

WHEREAS, the District's Board of Trustees (the "Trustees"), a body politic and corporate, is the governing body of the District.

WHEREAS, on October 3, 2018 the District adopted Resolution No. 2018-05 which approved various documents related to a transaction (the "Transaction") involving The Cleveland Clinic Foundation and its affiliates, including that certain Member Substitution Agreement dated October 12, 2018, by and among the District, The Cleveland Clinic Foundation ("CCF"), Cleveland Clinic Florida Regional Health System Non-profit Corporation ("Cleveland Clinic Florida"), Indian River Medical Center, Inc., d/b/a Indian River Medical Center (the "Medical Center"), Indian River Health Services Corporation ("Health Services"), Health Systems of Indian River, Inc. ("HSIR"), Vero Radiology Associates, LLC ("VRA"), and Indian River Hospital Foundation, Inc., d/b/a Indian River Medical Center Foundation, a Florida not for profit corporation (the "Foundation") (the "Member Substitution Agreement"); and

WHEREAS, the Transaction is structured to facilitate CCF through Cleveland Clinic Florida in becoming the sole member and operator of the Medical Center and its affiliates in exchange for Cleveland Clinic and Cleveland Clinic Florida fulfilling their Fundamental Commitments as defined in the Member Substitution Agreement; and

WHEREAS, as part of the Closing of the Transaction (the "Closing") the District and the Foundation have negotiated certain amendments to the Agreement Regarding Return of Granted Funds dated December 20, 2007 between the District and the Foundation (the "2007 Agreement") as set forth in that certain First Amendment to the 2007 Agreement, a copy of which is attached hereto as Exhibit "A" (the "First Amendment"); and

WHEREAS, the 2007 Agreement provides for a certain "Repayment Obligation" (as defined in the 2007 Agreement) in the event the District enters a transaction involving the sale of

all or substantially all of the "Medical Center Facilities" (as defined in the 2007 Agreement) to any prospective purchaser (other than the Medical Center) or another similar Florida not-for-profit corporation approved in writing by the Foundation; and

WHEREAS, in the First Amendment, the Foundation has approved the Transaction and has agreed that Cleveland Clinic Florida, in becoming the sole member of the Medical Center, and represented such Transaction and member substitution does not trigger a "Repayment Event" as defined in the 2007 Agreement; and

WHEREAS, in addition, the First Amendment provides, among other things, that:

(a) all grants and contributions made by the Foundation to the Medical Center after the Closing will not be subject to the 2007 Agreement unless otherwise agreed by the District and the Foundation in writing; and

(b) grants and contributions made by the Foundation to the Medical Center after December 20, 2007, and before the Closing that are currently considered subject to the 2007 Agreement will continue to be subject to all provisions of the 2007 Agreement (including, but not limited to, the Depreciation Provisions (as defined in Sections 2 and 3 of the 2007 Agreement)); and

WHEREAS, the First Amendment is a condition precedent to the Closing of the Transaction as set forth in the Member Substitution Agreement; and

WHEREAS, the Foundation has agreed to and has approved the First Amendment; and

WHEREAS, the District has determined and agreed that the First Amendment in substantially the form attached hereto as Exhibit "A" is in the best interests of the is in the best interests of the citizens of Indian River County and the surrounding area (the "Affected Community") and the District.

***NOW, THEREFORE***, be it resolved:

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

1. The recitals set forth above are true and correct, and are adopted as findings and determinations of the Trustees.
2. The First Amendment is in the best interests of the Affected Community and the District.

**SECTION 2. Negotiation.** The Trustees authorize the final negotiation, on their behalf, by the Chair, the Secretary, the Treasurer, and the Executive Director of the District (either singularly or in combination) of the First Amendment in substantially the form attached hereto as Exhibit "A".

**SECTION 3. Authorization.** The Trustees authorize, empower, approve all actions taken and to be taken by the Chair, Secretary, Treasurer and the Executive Director of the District (either singularly or in combination), and direct the Chair of the District to execute the First Amendment in substantially the form attached hereto as Exhibit "A" before the Closing of the Transaction or as a part of the Closing of the Transaction.

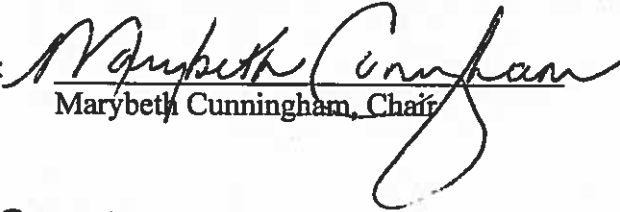
**SECTION 4. Severability.** If any section, paragraph, clause or provision of this Resolution shall be held to be invalid or ineffective for any reason, the remainder of this resolution shall continue in full force and effect, it being expressly found and declared that the remainder of this resolution would have been adopted despite the invalidity or ineffectiveness of such section, paragraph, clause or provision.

**SECTION 5. Appointed Representative.** The Trustees authorize, empower and direct the Chair, Secretary, Treasurer and Executive Director of the District (either singularly or in combination), in the name and on behalf of the District, to be their appointed representative and to negotiate, execute and deliver the First Amendment and to take such other actions as are necessary to carry out the intent and accomplish the purpose of the foregoing and the actions contemplated thereby.

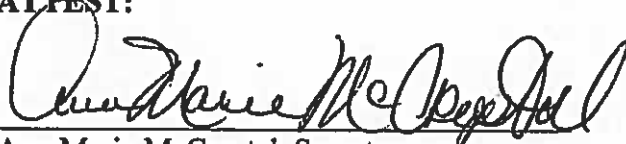
**SECTION 6. Effective Date.** This resolution shall take effect immediately upon its adoption.

Dated this 15<sup>th</sup> day of November, 2018.

**INDIAN RIVER COUNTY HOSPITAL DISTRICT**

By:   
Marybeth Cunningham, Chair

**ATTEST:**

  
Ann Marie McCrystal, Secretary

**Exhibit "A"**

**First Amendment to the Agreement Regarding Return of Granted Funds**

**FIRST AMENDMENT TO THE  
AGREEMENT REGARDING RETURN  
OF GRANTED FUNDS**

THIS FIRST AMENDMENT to the Agreement Regarding Return of Granted Funds is made by and between INDIAN RIVER COUNTY HOSPITAL DISTRICT (the "District"), an independent special district created by the Legislature of the State of Florida, and INDIAN RIVER HOSPITAL FOUNDATION, INC, d/b/a Indian River Medical Center Foundation (the "Foundation"), a Florida not-for-profit corporation qualified as tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986 as amended ("IRC") (herein this First Amendment shall be referred to as "Agreement").

WHEREAS, on the 20<sup>th</sup> day of December, 2007, the District and the Foundation entered into that certain Agreement Regarding Return of Granted Funds (the "2007 Agreement"); and

WHEREAS, the 2007 Agreement provides for a certain "Repayment Obligation" (as defined in the 2007 Agreement) in the event the District enters a transaction involving the sale of all or substantially all of the "Medical Center Facilities" (as defined in the 2007 Agreement) to any prospective purchaser (other than the Indian River Medical Center, Inc., d/b/a Indian River Medical Center (the "Medical Center") or another similar Florida not-for-profit corporation approved in writing by the Foundation); and

WHEREAS, the definition of terms set forth in the 2007 Agreement are incorporated by reference herein except as specifically clarified and modified by this Agreement; and

WHEREAS, the District and the Foundation have executed that certain Member Substitution Agreement dated October \_\_\_\_, 2018, by and among The Cleveland Clinic Foundation ("CCF"), Cleveland Clinic Florida Regional Health System Non-profit Corporation, the Medical Center, the Foundation, Indian River Health Services Corporation, Health Systems of Indian River, Inc., Vero Radiology Associates, LLC, and the District (the "Member Substitution Agreement"); and

WHEREAS, the Member Substitution Agreement provides that as part of the closing of the transaction described in the Member Substitution Agreement (the "Closing") that the District will enter into an Amended and Restated Long-Term Lease with the Medical Center ("Amended and Restated Long-Term Lease"); and

WHEREAS, as part of the Closing the 2007 Agreement will be amended to provide among other things that all grants and contributions made by the Foundation after the Closing will not be subject to the 2007 Agreement unless otherwise agreed by the District and the

Foundation in writing; and

WHEREAS, the Foundation has entered into the Member Substitution Agreement and has approved the Amended and Restated Long-Term Lease and acknowledges and agrees to make no claim or assertion that the transaction and the closing thereof contemplated by the Member Substitution Agreement and the Amended and Restated Long Term Lease in any way trigger or implicate the Repayment Obligation under the 2007 Agreement; and

WHEREAS, the District and the Foundation agree that pursuant to the 2007 Agreement any sale of the Medical Center Facilities to the Medical Center during the period CCF or an Affiliate is the Medical Center's Member will not trigger or implicate the Repayment Obligation; and

WHEREAS, the District and the Foundation also agree that (a) any transfer or sale by the Medical Center of its leasehold interest of the Medical Center under the Amended and Restated Long-Term Lease; or (b) any subsequent change in the Member of the Medical Center after the closing of the transaction with CCF, Cleveland Clinic Florida Regional Health System Non-profit Corporation, the District, the Foundation, Indian River Health Services Corporation, Health Systems of Indian River, Inc., Vero Radiology Associates, LLC, and the Medical Center contemplated by the Member Substitution Agreement will not be considered a transaction involving the sale of all or substantially all of the Medical Center Facilities (as described in Section 4 of the 2007 Agreement) or otherwise be considered a transaction involving the sale of all or substantially all of the Medical Center Facilities (as described in Section 4 of the 2007 Agreement) or otherwise trigger or implicate the Repayment Obligation under the 2007 Agreement; and

WHEREAS, the District and the Foundation acknowledge that during the Commitment Period (as such term is defined in the Member Substitution Agreement) the District has certain consent rights concerning a change of control of the Medical Center (as defined in the Member Substitution Agreement) or on assignment of the Lease; and

WHEREAS, the Foundation has asked to be consulted in the event such change of control or assignment were being considered; and

WHEREAS, the District and the Foundation agree that grants and contributions made by the Foundation to the Medical Center after December 20, 2007, and before the Closing that are currently considered subject to the 2007 Agreement will continue to be subject to all provisions of the 2007 Agreement (including, but not limited to, the Depreciation Provisions (as defined in Sections 2 and 3 of the 2007 Agreement)); and

WHEREAS, the District and the Foundation agree that except as modified by this First Amendment, the 2007 Agreement continues in full force and effect.

NOW, THEREFORE, the District and the Foundation agree as follows:

1. The above "Whereas" clauses are true and correct, accurately outline the facts

surrounding this Agreement, and are incorporated by reference herein.

2. Section 1 of the 2007 Agreement is amended by adding the following sentences:

“Provided, however, no grants or contributions made by the Foundation to the Medical Center on or after the Closing of the transaction contemplated by the Member Substitution Agreement dated October \_\_\_\_, 2018, will be treated as having been made under and subject to the terms of this Agreement.”

3. All grants and contributions made by the Foundation to the Medical Center which are considered as being subject to the provisions of the 2007 Agreement as of the day before the Closing will continue to be subject to the terms of the 2007 Agreement (including, but not limited to, the Depreciation Provisions).

4. The Foundation agrees that it will not assert that the Amended and Restated Long-Term Lease executed by the District and the Medical Center and the transactions contemplated by the Member Substitution Agreement is a sale of all, or substantially all, of the Medical Center Facilities (as described in Section 4 of the 2007 Agreement) in any administrative action or legal action concerning the Amended and Restated Long-Term Lease and/or the Member Substitution Agreement and that it will not assert that the transactions contemplated thereby otherwise trigger or implicate the Repayment Obligation under the 2007 Agreement.

5. The District and the Foundation agree that pursuant to the existing terms of the 2007 Agreement, any sale of all or substantially all of the Medical Center Facilities (as described in the 2007 Agreement) to the Medical Center during the period CCF or its Affiliates are the Member of the Medical Center will not trigger or implicate the Repayment Obligation under the 2007 Agreement. Further, pursuant to Section 4 of the 2007 Agreement, a sale by the District of all or substantially all of the Medical Center Facilities to a third-party purchaser which is another similar Florida not for profit corporation will also not trigger or implicate the Repayment Obligation so long as the Foundation consents in writing to such sale. The parties further agree this provision shall not be a narrowing of the existing terms of the 2007 Agreement. “Affiliate” means with respect to a potential entity (a) any entity which controls, is under the control of, or under common control with, the subject entity and (b) any trust for the primary benefit of such entity or any of the foregoing.

6. The parties agree that (a) any transfer or assignment by the Medical Center of the Medical Center’s leasehold interest under the Amended and Restated Long-Term Lease, or (b) any subsequent Member substitution concerning the Medical Center or its member after the Closing, or any combination of any of the foregoing transactions described in this Section 6, will not be considered a sale of all or substantially all of the Medical Center Facilities (as described in Section 4 of the 2007 Agreement) and will not trigger or implicate the Repayment Obligation under Section 4 of the 2007 Agreement. Provided, however, in the event that during the Commitment Period the District has consent rights pursuant to Section 15.1(b) of the Amended and Restated Lease Agreement concerning a transaction described in Section 6(a) or 6(b) of this

Agreement, then it shall consult with (but not be required to obtain approval from) representatives of the Foundation at least thirty (30) days prior to granting any such consent. Failure to consult in a manner satisfactory to the Foundation or on a timely basis as provided herein shall not be deemed a breach of this Agreement or the 2007 Agreement and shall not result in a Repayment Obligation.

7. The District and the Foundation agree that this Agreement shall take effect as of the Closing.

8. Except as provided in this Agreement in all other respects the 2007 Agreement remains in full force and effect.

The parties have executed this Agreement on the dates as provided below to be effective as of the Closing, as provided in Section 7.

INDIAN RIVER COUNTY HOSPITAL DISTRICT

By: M Crayham

Date: NOV 15, 2018

INDIAN RIVER HOSPITAL FOUNDATION, INC.  
d/b/a INDIAN RIVER MEDICAL CENTER  
FOUNDATION

By: \_\_\_\_\_

Date: \_\_\_\_\_, 2018