

This instrument prepared by  
and return to:

Zachary Bazara, Esq.  
Greenberg Traurig, P.A.  
401 East Las Olas Boulevard, Suite 2000  
Fort Lauderdale, FL 33301  
Phone: (954) 768-8288

**DECLARATION OF EASEMENTS,  
COVENANTS, CONDITIONS AND RESTRICTIONS**

**THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS** (the "**Declaration**") is made and entered into as of December 31, 2018, by **INDIAN RIVER COUNTY HOSPITAL DISTRICT**, an independent special district created by the Legislature of the State of Florida ("**Declarant**"), whose address is 3730 7th Terrace, Suite 204-B, Vero Beach, Florida 32960.

**R E C I T A L S**

- A. Declarant is the owner of that certain real property situated in Indian River County, Florida, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference, which real property is made up of three (3) parcels, legally described on Exhibit A and referred to herein individually as the IRMC Parcel, the VNA Parcel and the Hospice House Parcel and collectively as the "Parcels". The VNA Parcel and the Hospice House Parcel are sometimes collectively referred to as the "District Parcels".
- B. Declarant has leased the IRMC Parcel to Indian River Memorial Hospital, Inc., a Florida not for profit corporation, d/b/a Indian River Medical Center ("IRMC") pursuant to that certain Amended and Restated Lease of Hospital Facilities and Agreement for Operation of Indian River Memorial Hospital dated November 15, 2012, as amended and restated by that certain Amended and Restated Lease Agreement dated January 1, 2019 (as same may be further amended, extended or renewed, the "IRMC Lease").
- C. Declarant has leased a portion of the Hospice House Parcel as more particularly described in Exhibit "B" to Visiting Nurse Association & Hospice Foundation, Inc., a Florida not for profit corporation ("Hospice"), under that certain Lease Agreement for Hospice House between Indian River County Hospital District and VNA dated December 19, 1996, as amended by Amendment to Lease Agreement for Hospice House dated August 17, 2000, Assignment of Lease dated August 18, 2000, and renewal Letter dated May 1, 2015 (the "Hospice House Lease").
- D. Declarant has leased a portion of the VNA Parcel as more particularly described in Exhibit "C" to Visiting Nurse Association of the Treasure Coast, Inc., a Florida not-for-

profit corporation ("VNA"), whose address is 1110 35th Lane, Vero Beach, Florida 32960, being the Lessee under that certain Amended and Restated Lease Agreement which began on June 1, 2017, as amended by First Amendment to Amended and Restated Lease Agreement dated October 20, 2017 (the "VNA Lease").

- E. Declarant desires to impose certain easements upon the Parcels for the benefit of the IRMC Parcel and for the benefit of the District Parcels, and to establish certain covenants, conditions and restrictions with respect to the District Parcels and the present and future owners and occupants thereof, on the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the above premises and of the covenants herein contained, the Declarant does hereby declare that the Parcels and all present and future owners and occupants of the Parcels shall be and hereby are subject to the terms, covenants, easements, restrictions and conditions hereinafter set forth in this Declaration, so that said Parcels shall be maintained, kept, sold and used in full compliance with and subject to this Declaration and, in connection therewith, Declarant declares as follows:

### **AGREEMENTS**

**1. Definitions.**

For purposes hereof:

- 1.1 The term "IRMC" shall mean Indian River Memorial Hospital, Inc., a Florida not-for-profit corporation (its successors or assigns).
- 1.2 The term "IRMC Lease" is defined in the Recitals.
- 1.3 The term "Owner" or "Owners" shall mean the Declarant and any and all successors or assigns of such persons as the owner or owners of fee simple title to all or any portion of the real property covered hereby, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such real property.
- 1.4 The term "Parcel" or "Parcels" shall mean each separately identified parcel of real property now constituting a part of the real property subjected to this Declaration as described on Exhibit "A", that is, the IRMC Parcel, the VNA Parcel, the Hospice House Parcel and any future subdivisions thereof.
- 1.5 The term "Permittees" shall mean the tenant(s), subtenant(s) or occupant(s) of a Parcel, and the respective employees, agents, contractors, customers, invitees and licensees of (i) the Owner of such Parcel and/or (ii) such tenant(s), subtenant(s) or occupant(s).
- 1.6 The term "Survey" shall mean the survey attached hereto as Exhibit "D" and by reference made a part hereof. Except as may be otherwise provided in this Declaration, the Survey is for identification purposes only. The Survey also

depicts for reference purposes only some of the buildings, improvements, and easements located on the IRMC Parcel.

- 1.7 The term "**Perimeter Driveway**" shall mean that driveway and related driveway improvements, paving, curbing, entrances and exits, located near the Western boundary of the IRMC Parcel and the VNA Parcel (and sometimes referred to as Dr. Hugh McCrystal Drive and 11th Drive) and near the Southern Boundary of the VNA Parcel (and sometimes referred to as 35th Lane), as shown on the Survey.

2. **Grant of Easements over VNA Parcel and Hospice House Parcel in favor of IRMC Parcel.** Subject to any express conditions, limitations or reservations contained herein, Declarant hereby declares that the IRMC Parcel and all Owners and Permittees of the IRMC Parcel shall be benefited by the following non-exclusive, perpetual easements which are hereby imposed upon the VNA Parcel and the Hospice House Parcel, as more fully set forth below:

- (a) An easement for reasonable access, ingress and egress over the Perimeter Driveway located on the VNA Parcel, so as to provide for the passage of motor vehicles and pedestrians between the IRMC Parcel and all abutting streets or rights of way furnishing access to the VNA Parcel (if any).
- (b) An easement for utility purposes over currently existing utility lines and facilities located on the VNA Parcel.
- (c) An easement for drainage over drainage facilities located on the VNA Parcel and Hospice House Parcel if, and to the extent, such drainage is required in connection with the existing improvements and other improvements to be developed by Owners or Permittees of the IRMC Parcel.

3. **Grant of Easements over IRMC Parcel in favor of VNA Parcel.** Subject to any express conditions, limitations or reservations contained herein, Declarant hereby declares, and IRMC agrees, that the Owners and Permittees of the VNA Parcel shall be benefited by the following non-exclusive, perpetual easements which are hereby imposed upon the IRMC Parcel:

- (a) an easement for reasonable access, ingress and egress over the Perimeter Driveway located on the IRMC Parcel, so as to provide for the passage of motor vehicles and pedestrians between the VNA Parcel and abutting streets or rights of way furnishing access to the IRMC Parcel.
- (b) An easement for utility purposes over currently existing utility lines and facilities located on the IRMC Parcel.
- (c) An easement for drainage over drainage facilities located on the IRMC Parcel, if, and to the extent, such drainage is required in connection with the existing improvements and other improvements to be developed by Owners or Permittees of the VNA Parcel.

4. **Grant of Easements over IRMC Parcel in favor of Hospice House Parcel.** Subject to any express conditions, limitations or reservations contained herein, Declarant hereby declares, and IRMC agrees, that the Owners and Permittees of the Hospice House Parcel shall be benefited by the following non-exclusive, perpetual easements which are hereby imposed upon the IRMC Parcel:

- (a) A utility easement for the construction and maintenance of water, wastewater, and electric facilities over, under, across and upon the property described on Exhibit E, attached hereto and made a part hereof, with rights of ingress and egress thereto, but subject to existing matters of record, including, without limitation, any rights of the City of Vero Beach granted in that certain Deed of Easement & Subordination Agreement of Leasehold Estates recorded in Official Records Book 1336, at Page 2520, in the Public Records of Indian River County, Florida
- (b) An easement for drainage over drainage facilities located on the IRMC Parcel, if, and to the extent, such drainage is required in connection with the existing improvements and other improvements to be developed by Owners or Permittees of the Hospice House Parcel.

5. **Future Cooperation.** Owners and Permittees of the IRMC Parcel, VNA Parcel and Hospice House Parcel shall use their respective good faith, commercially reasonable efforts and reasonable diligence to cooperate to enter into any necessary utility and/or drainage easements or agreements that are required by a governmental authority having jurisdiction or are otherwise necessary to benefit any of the Parcels in the future so long as such easements do not interfere with any present or future improvements located on the Parcel.

6. **Maintenance.**

- 6.1 **General.** The Owner or the Permittees of each District Parcel shall maintain its respective Parcel in a clean and neat condition and shall take such measures as are necessary to control grass, weeds, blowing dust, dirt, litter or debris.
- 6.2 **Buildings and Appurtenances Thereto.** The Owner or the Permittees of each District Parcel covenant to keep and maintain, at their sole cost and expense, the building(s) located from time to time on such District Parcel in a good, safe, clean, and slightly order, condition and repair. No building or structure of any kind shall be erected or altered on the District Parcels until a complete set of the plans and specifications, elevation drawings, location and plot plan therefor (including, without limitation, utility lines, driveways, signs, parking areas, lights, curb-cuts, accessways, landscaping and site preparation and site development work), in detail and to scale, shall have been submitted to and approved by Owner of the IRMC Parcel and, during the term of the IRMC Lease, to IRMC. Within fifteen (15) business days after receipt of such plans and specifications, elevations, drawings, location and plot plans, Owner of the IRMC Parcel and, during the term of the IRMC Lease, IRMC, shall give Owner of the applicable District Parcel written notice of such party's approval or disapproval of such plans and

specifications, elevations, drawings, location and plot plans. If Owner of the IRMC Parcel and, during the term of the IRMC Lease, IRMC, fail to provide such notice within such fifteen (15) business day period, such party shall be deemed to have approved such of such plans and specifications, elevations, drawings, location and plot plans. Upon approval by Owner of the IRMC Parcel and, during the term of the IRMC Lease, IRMC, of such plans and specifications, elevations, drawings, location and plot plans (hereinafter, the "Approved Plans"), Owner of the District Parcel shall construct such improvements in substantial accordance with the Approved Plans and in accordance with all applicable governmental requirements and in a good, workmanlike and first-class condition.

- 6.3 All future buildings and structures on the District Parcels shall be of first quality construction and architecturally designed so that the exterior building design (including, without limitation, building elevations, materials, color, canopy, signs and other pertinent details) shall conform with the required building and zoning codes of the governmental entity which issues the building permit for such building or structure.

7. **Restrictions.**

7.1 **District Parcels Restrictions.**

- (a) Neither the Declarant, nor the Owner(s) nor the Permittees of the District Parcels shall at any time before January 1, 2029:
- (i) independently, or in concert with others, develop, acquire, own, manage, or engage in the business of an acute care hospital or an outpatient/ambulatory surgery center upon any District Parcel; or
  - (ii) engage in any of the "Prohibited Activities" defined below upon any District Parcel. Provided, this covenant shall not prohibit the Declarant from funding indigent care for residents living within the physical boundaries of Indian River County at any health care facility.

For purposes of this Section 6.1(a), "Prohibited Activities" are acute care services that compete directly with IRMC, including without limitation, the operation of an acute care general hospital, a specialty hospital, an ambulatory surgical center, an emergency care center, a clinical laboratory; any facility that provides diagnostic, ultrasound, radiology (which includes magnetic resonance imaging (MRI), computerized tomography (CT), and positron emission tomography (PET)), nuclear medicine, endoscopy, mammography, respiratory therapy, or rehabilitative therapy services; or any facility that provides cardiac or cancer diagnosis or treatment.

- (b) No portion of the District Parcels shall ever be used or occupied as a meeting hall; bingo hall; automotive maintenance or repair facility; for

industrial purposes; skating or roller rink; bowling alley; sales of boats, trailers, automobiles or other vehicles; cocktail lounge or bar serving alcoholic beverages (though, a full service restaurant located on any office building may serve alcoholic beverages as an ancillary service); funeral parlor; massage parlor; animal clinic; discotheque; dance hall; car wash; gas station; off-track betting establishment; amusement or game room as a primary use; so called "flea market"; second hand or used goods store; pool room; so called "head shops"; night club; gun range; any business or use which emits offensive odors, fumes, dust or vapors, is a public or private nuisance, emits loud noise or sounds which are objectionable, or creates fire, explosive or other hazard; warehousing; or adult book store or store selling or exhibiting pornographic materials.

- (c) All exterior building signs constructed upon the District Parcels shall be restricted to identification of the business or service located or provided therein, or reasonably required directional signage. No exterior building or free-standing sign shall utilize flashing, moving or audible lights or appurtenances.

8. **No Rights in Public; No Implied Easements.**

Except as otherwise expressly provided herein, nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the IRMC Parcel or the District Parcels. No easements, except those expressly set forth herein, shall be implied by this Declaration.

9. **Remedies and Enforcement.**

- 9.1 **All Legal and Equitable Remedies Available.** In the event of a breach or threatened breach by any Owner or its Permittees of a Parcel of any of the terms, covenants, restrictions or conditions hereof, the harmed party shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance. During the term of the IRMC Lease, IRMC shall have the right, but not the obligation, at its expense, to enforce this Declaration on behalf of the Owner of the IRMC Parcel.
- 9.2 **Remedies Cumulative.** The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.
- 9.3 **No Termination For Breach.** Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Parcel made in good faith for value, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of such Parcel covered hereby whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

- 9.4 **Irreparable Harm.** In the event of a violation or threat thereof of any of the provisions of paragraphs 2, 3 4, and/or 6 of this Declaration, each Owner agrees that such violation or threat thereof shall cause the non-defaulting Owner and/or its Permittees to suffer irreparable harm and such non-defaulting Owner and its Permittees shall have no adequate remedy at law. As a result, in the event of a violation or threat thereof of any of the provisions of paragraphs 2, 3, 4 and/or 6 of this Declaration, the non-defaulting Owner and IRMC, in addition to all remedies available at law or otherwise under this Declaration, shall be entitled to injunctive or other equitable relief to enjoin a violation or threat thereof of paragraphs 2, 3, 4 and/or 6 of this Declaration.

10. **Term.** The easements, covenants, conditions and restrictions contained in this Declaration shall be effective commencing on the date of recordation of this Declaration in the office of the Indian River County Recorder and shall remain in full force and effect thereafter in perpetuity, unless this Declaration is modified, amended, canceled or terminated by the written consent of all then record Owners of the IRMC Parcel, the VNA Parcel and the Hospice House Parcel in accordance with paragraph 11.2 hereof. This Declaration shall be subject to: (1) the rights of Hospice, as tenant, under the currently existing Hospice House Lease, as same may be extended or amended; (2) the rights of VNA, as tenant, under the currently existing VNA Lease, as same may be extended or amended; and (3) covenants, easements and restrictions of record, though this reference is not intended to reimpose same. Furthermore, and notwithstanding anything contained herein to the contrary, the provisions of Section 6 (Maintenance) and Section 7 (Restrictions) shall expressly not apply to: (i) Hospice as tenant or (potential future) fee owner of the Hospice House Parcel, or (ii) VNA as tenant or (potential future) fee owner of the VNA Parcel, it being understood that such exemption is personal to Hospice and VNA, and their successors by merger, consolidation, change of name, or reorganization.

11. **Miscellaneous.**

- 11.1 **Attorneys' Fees.** In the event a party (including IRMC) institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

11.2 **Amendment.**

- (a) Declarant agrees that the provisions of this Declaration may be modified or amended, in whole or in part, or terminated, only by the written consent of all record Owners of the IRMC Parcel, the VNA Parcel and the Hospice House Parcel, evidenced by a document that has been fully executed and acknowledged by all such record Owners and recorded in the official records of the County Recorder of Indian River County, Florida.
- (b) Notwithstanding subparagraph 11.2(a) above to the contrary, no termination of this Declaration and no modification or amendment of this Declaration shall be made nor shall the same be effective unless the same

has been expressly consented to in writing by IRMC (during the continuance of the IRMC Lease).

- 11.3 Consents. Wherever in this Declaration the consent or approval of an Owner, IRMC, VNA or Hospice is required, unless otherwise expressly provided herein, such consent or approval shall not be unreasonably withheld, conditioned or delayed. Any request for consent or approval shall: (a) be in writing; (b) specify the section hereof which requires that such notice be given or that such consent or approval be obtained; and (c) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. The consent of a party under this Declaration, to be effective, must be given, denied or conditioned expressly and in writing. During the continuance of the IRMC Lease, any consent by the Owner of the IRMC Parcel, to be effective, shall also require the consent of IRMC.
- 11.4 Covenants to Run with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs and personal representatives.
- 11.5 Grantee's Acceptance. The grantee of any Parcel or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from an original party or from a subsequent owner of such Parcel, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions and obligations contained herein. By such acceptance, any such grantee shall for himself and his successors, assigns, heirs, and personal representatives, covenant, consent and agree to and with the other party, to keep, observe, comply with and perform the obligations and agreements set forth herein with respect to the property so acquired by such grantee.
- 11.6 Severability. Each provision of this Declaration and the application thereof to the IRMC Parcel, the VNA Parcel and the Hospice House Parcel are hereby declared to be independent of and severable from the remainder of this Declaration. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Declaration. In the event the validity or enforceability of any provision of this Declaration is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared. Ownership of all Parcels by the same person or entity shall not terminate this Declaration nor in any manner affect or impair the validity or enforceability of this Declaration.



- 11.7 Entire Agreement. This Declaration contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein and all prior representations, negotiations and understandings are superseded hereby.
- 11.8 Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested or by other national overnight courier company or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party and IRMC may change from time to time their respective address for notice hereunder by like notice to the other party and IRMC. Notice given by any Owner hereunder to be effective shall also simultaneously be delivered to IRMC (during the continuance of the IRMC Lease).

The notice addresses of Declarant and IRMC are as follows:

**IRMC:** Indian River Memorial Hospital, Inc.  
Attention: President  
1000 36th St.  
Vero Beach, Florida 32960

With a Copy to: The Cleveland Clinic Foundation  
9500 Euclid Avenue  
NA-4  
Cleveland Clinic, Ohio 44195  
Fax: (216) 444-0088  
Attention: Tomislav Mihaljevic

**Declarant:** Indian River County Hospital District  
Attention: Executive Director  
3730 7th Terrace, Suite 204-B  
Vero Beach, Florida 32960

With a Copy to: Law Offices of Jennifer D. Peshke, P.A.  
Jennifer D. Peshke, Esq.  
4733 North Highway A1A  
Vero Beach, Florida 32963

- 11.9 Governing Law and Venue. The laws of Florida shall govern the interpretation, validity, performance and enforcement of this Declaration. Venue shall lie exclusively in Indian River County, Florida.
- 11.10 Bankruptcy. In the event of any bankruptcy affecting any Owner or tenant of any Parcel, the parties agree that this Declaration shall, to the maximum extent permitted by law, be considered an agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

***[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]***

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first written above.

Signed, sealed and delivered  
in our presence:

Kate Voss  
(Signature of Witness #1)  
Kate Voss  
(Printed name of Witness #1)

DECLARANT:

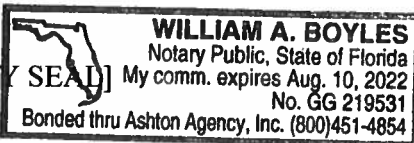
INDIAN RIVER COUNTY HOSPITAL  
DISTRICT

By: Marybeth Cunningham  
Name: Marybeth Cunningham  
Title: Trustee and Chairman

Jennifer Frederick  
(Signature of Witness #2)  
Jennifer Frederick  
(Printed name of Witness #2)

STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

THE FOREGOING INSTRUMENT was acknowledged before me this 17th day of December, 2018, by Marybeth Cunningham, Trustee and Chairman of **INDIAN RIVER COUNTY HOSPITAL DISTRICT**, who is (check one) X personally known to me, or \_\_\_\_\_ produced \_\_\_\_\_ as identification.

[AFFIX NOTARY SEAL]  Notary Public Signature  
Print Notary Name: William A. Boyles  
My commission expires: \_\_\_\_\_

[Declaration Signature Page]

## JOINDER AND CONSENT TO DECLARATION

The undersigned, Indian River Memorial Hospital, Inc., a Florida not for profit corporation, d/b/a Indian River Medical Center ("IRMC"), whose address is 1000 36th St., Vero Beach, Florida 32960, being the Lessee under that certain Amended and Restated Lease of Hospital Facilities and Agreement for Operation of Indian River Memorial Hospital dated November 15, 2012, as amended and restated by that certain Amended and Restated Lease Agreement dated ~~January 1, 2019~~, hereby joins in and consents to the foregoing Declaration.

made effective as of December 31, 2018,

Signed, sealed and delivered  
in our presence:

INDIAN RIVER MEMORIAL HOSPITAL, INC.,  
a Florida not for profit corporation, d/b/a Indian  
River Medical Center

Geraldine McPherson Smith  
(Signature of Witness #1)

Geraldine McPherson Smith  
(Printed name of Witness #1)

By: Wayne T. Hockmeyer  
Name: Wayne T. Hockmeyer, Ph.D.  
Title: Chairman

Cynthia S. Goodrich  
(Signature of Witness #2)

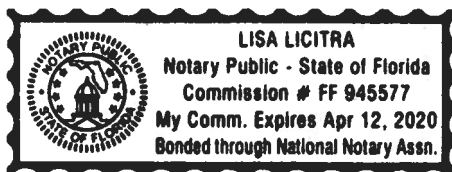
Cynthia S. Goodrich  
(Printed name of Witness #2)

STATE OF FLORIDA  
COUNTY OF Indian River

THE FOREGOING INSTRUMENT was acknowledged before me this 12<sup>th</sup> day of December, 2018, by Wayne T. Hockmeyer, Ph.D., as Chairman of Indian River Memorial Hospital, Inc., a Florida not for profit corporation, d/b/a Indian River Medical Center, on behalf thereof, who is (check one): ☒ personally known to me, or ☐ produced as identification.

[AFFIX NOTARY SEAL]

Lisa Licitra  
Notary Public Signature  
Print Notary Name: LISA LICITRA  
My commission expires: 4-12-2020



[Joinder Signature Page]

## JOINDER AND CONSENT TO DECLARATION

The undersigned, **Visiting Nurse Association & Hospice Foundation, Inc.**, a Florida not for profit corporation ("**Hospice**"), whose address is 901 37th St., Vero Beach, FL 32960, being the Lessee under that certain Lease Agreement for Hospice House between Indian River County Hospital District and VNA dated December 19, 1996, as amended by Amendment to Lease Agreement for Hospice House dated August 17, 2000, Assignment of Lease dated August 18, 2000, and renewal Letter dated May 1, 2015, hereby joins in and consents to the foregoing Declaration.

Signed, sealed and delivered  
in our presence:

Detrol Hawkins

(Signature of Witness #1)

Deborah Hawkins

(Printed name of Witness #1)

Eileen M. Hanley

(Signature of Witness #2)

Eileen M. Hanley

(Printed name of Witness #2)

VISITING NURSE ASSOCIATION & HOSPICE  
FOUNDATION, INC., a Florida not for profit  
corporation

By: Lundy S. Fields

Name: Lundy S. Fields

Title: President/CEO

STATE OF FLORIDA  
COUNTY OF Indian River

THE FOREGOING INSTRUMENT was acknowledged before me this 23rd day of  
October, 2018, by Lundy S. Fields, as  
President and CEO of Visiting Nurse Association & Hospice Foundation, Inc., a  
Florida not for profit corporation, on behalf thereof, who is (check one): ☒ personally known to  
me, or ☐ produced \_\_\_\_\_ as identification.

[AFFIX NOTARY SEAL]

Eileen M. Hanley  
Notary Public Signature  
Print Notary Name: EILEEN M. HANLEY  
My commission expires: \_\_\_\_\_



[Joinder Signature Page]

## JOINDER AND CONSENT TO DECLARATION

The undersigned, **Visiting Nurse Association of the Treasure Coast, Inc.**, a Florida not-for-profit corporation ("**VNA**"), whose address is 1110 35th Lane, Vero Beach, Florida 32960, being the Lessee under that certain Amended and Restated Lease Agreement which began on June 1, 2017, as amended by First Amendment to Amended and Restated Lease Agreement dated October 20, 2017, hereby joins in and consents to the foregoing Declaration.

Signed, sealed and delivered  
in our presence:

*Deborah Hawkins*  
(Signature of Witness #1)

Deborah Hawkins  
(Printed name of Witness #1)

*Eileen M. Hanley*  
(Signature of Witness #2)

Eileen M. Hanley  
(Printed name of Witness #2)

VISITING NURSE ASSOCIATION OF THE  
TREASURE COAST, INC., a Florida not for profit  
corporation

By: *Lundy S. Fields*

Name: Lundy S. Fields

Title: President/CEO

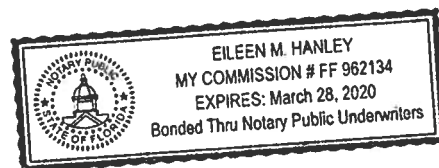
STATE OF FLORIDA  
COUNTY OF Indian River

THE FOREGOING INSTRUMENT was acknowledged before me this 28<sup>th</sup> day of  
October, 2018, by Lundy S. Fields, as  
President and CEO of Visiting Nurse Association of the Treasure Coast, Inc., a  
Florida not for profit corporation, on behalf thereof, who is (check one): ☒ personally known to  
me, or ☐ produced \_\_\_\_\_ as identification.

[AFFIX NOTARY SEAL]

*Eileen M. Hanley*  
Notary Public Signature

Print Notary Name: EILEEN M. HANLEY  
My commission expires: \_\_\_\_\_



[Joinder Signature Page]

## **EXHIBIT A**

### **Legal Descriptions of IRLC Parcel, VNA Parcel and Hospice House Parcel**

#### **IRLC PARCEL:**

##### **PARCEL A: (Main Hospital)**

The Northwest 1/4 of the Northwest 1/4 and the Northeast 1/4 of the Northwest 1/4 of Section 36, Township 32 South, Range 39 East, Indian River County, Florida.

#### **LESS AND EXCEPT PARCELS 1, 2 AND 3 AS SET FORTH BELOW:**

Parcel 1: That parcel described as Parcel No. 118 in Deed to the State of Florida, recorded June 20, 1977, in Official Records Book 553, Page 2835, Public Records of Indian River County, Florida and that parcel described as Parcel No. 801 in Deed to the State of Florida recorded June 20, 1977, in Official Records Book 553, Page 2837, Public Records of Indian River County, Florida.

Also described as: The North 75.00 feet thereof for 37th Street/Barber Avenue road right-of-way.

Parcel 2: The South 260.00 feet of the West 934.00 feet of said Northwest 1/4 of the Northwest 1/4 Section 36, Township 32 South, Range 39 East; and,

Parcel 3: That certain Premises including "VNA Hospice House" more particularly described as follows:

The Northeast 1/4 of the Northwest 1/4 of Section 36, Township 32 South, Range 39 East, less and except the West 520.00 feet thereof; less and except the East 275.00 feet of the South 800.00 feet thereof; less and except the South 310.00 feet thereof; and less and except the North 75.00 feet thereof.

#### **HOSPICE HOUSE PARCEL:**

The Northeast 1/4 of the Northwest 1/4 of Section 36, Township 32 South, Range 39 East, less and except the West 520.00 feet thereof; less and except the East 275.00 feet of the South 800.00 feet thereof; less and except the South 310.00 feet thereof; and less and except the North 75.00 feet thereof.

#### **VNA PARCEL:**

The South 260.00 feet of the West 934.00 feet of said Northwest 1/4 of the Northwest 1/4 Section 36, Township 32 South, Range 39 East.

*Exhibit A*

**EXHIBIT "B"**

**Description of Property Leased to Hospice House**

The North 457.01 feet of the South 767.01 feet of the West 400.00 feet of the East 674.52 feet of the Northeast 1/4 of the Northwest 1/4 of Section 36, Township 32 South, Range 39 East, Indian River County, Florida being more particularly described as follows:

Commencing at the Northeast corner of the Northwest 1/4 of Section 36, Township 32 South, Range 39 East, run S 89°41'03" W along the north line of said Section 36 a distance of 274.52 feet; thence run S 00°43'02" E and parallel to the east line of said Northwest 1/4 a distance of 559.20 feet to the Point of Beginning; thence run S 89°36'32" W and parallel to the South line of the Northeast 1/4 of said Northwest 1/4 a distance of 400.00 feet; thence run S 00°43'02" E and parallel to the East line of said Northwest 1/4 a distance of 457.01 feet; thence run N 89°36'32" E and parallel to the said South line a distance of 400.00 feet; thence run N 00°43'02" W and parallel to the East line of said Northwest 1/4 a distance of 457.01 feet to the Point of Beginning.

*Exhibit B*

**EXHIBIT "C"**

**Description of Property Leased to VNA**

The buildings and improvements located on the following described property:

The South 260.00 feet of the West 934.00 feet of said Northwest 1/4 of the Northwest 1/4 Section 36, Township 32 South, Range 39 East.

*Exhibit C*



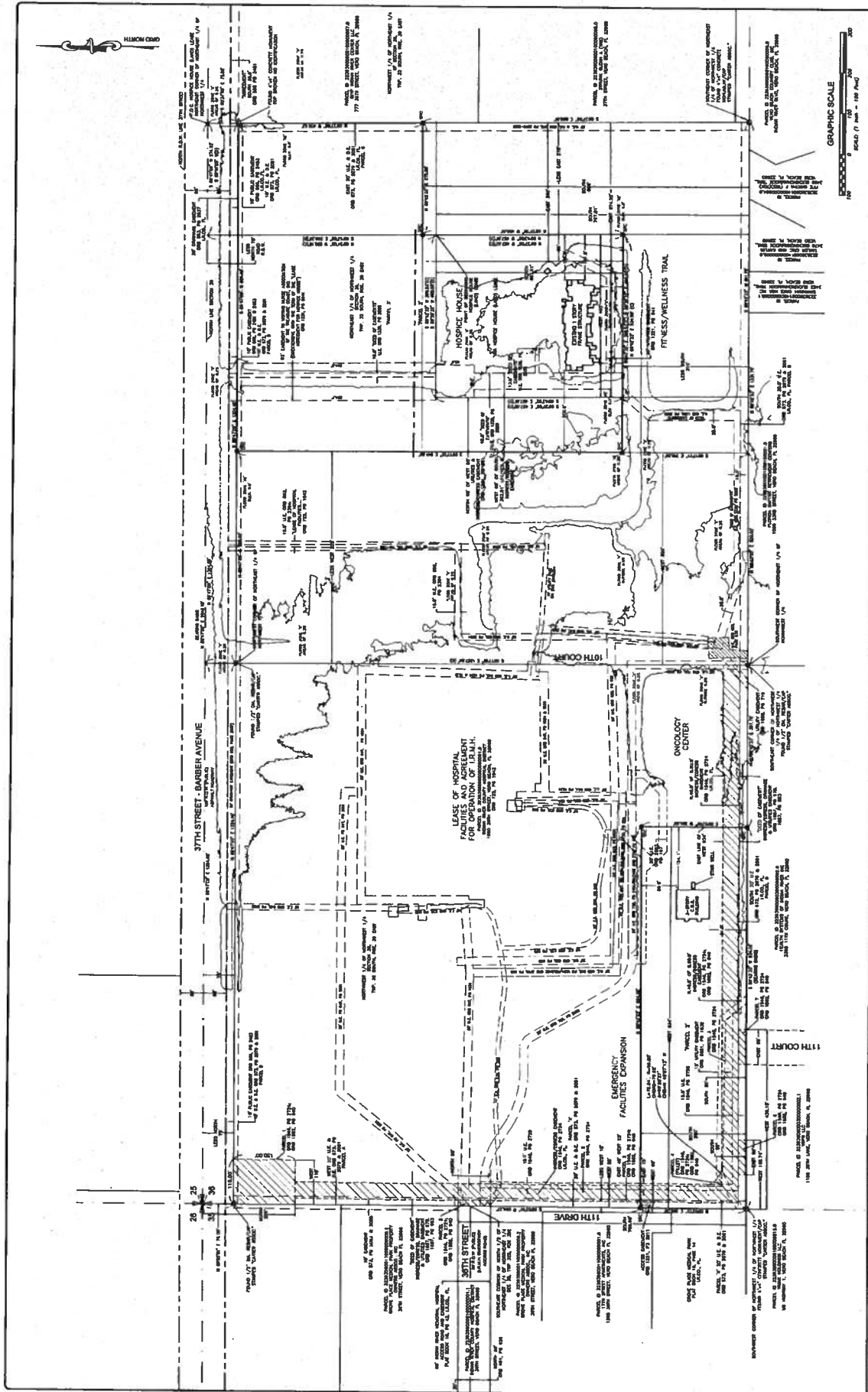
**EXHIBIT "D"**

**Survey**

**[ATTACH]**

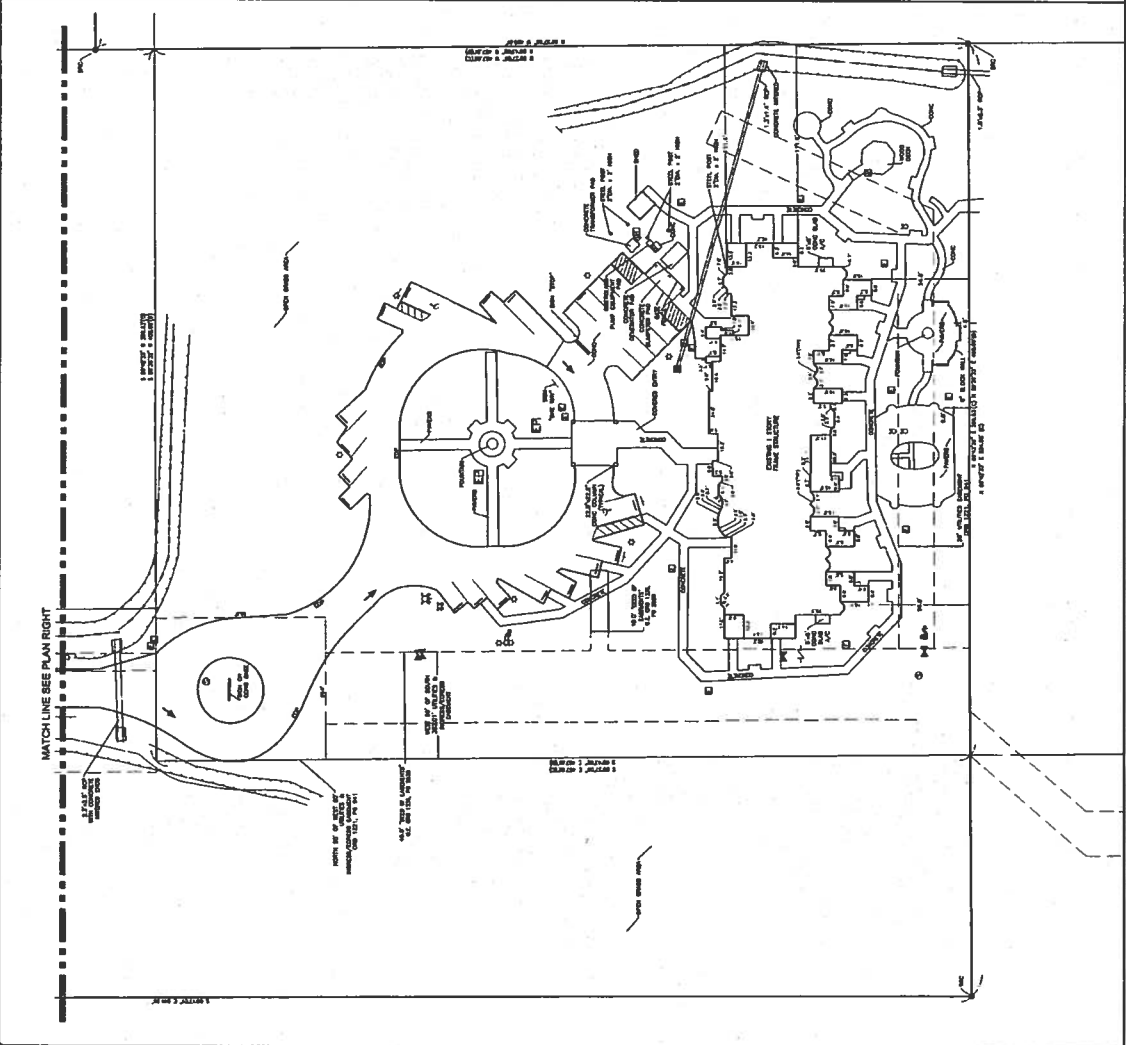
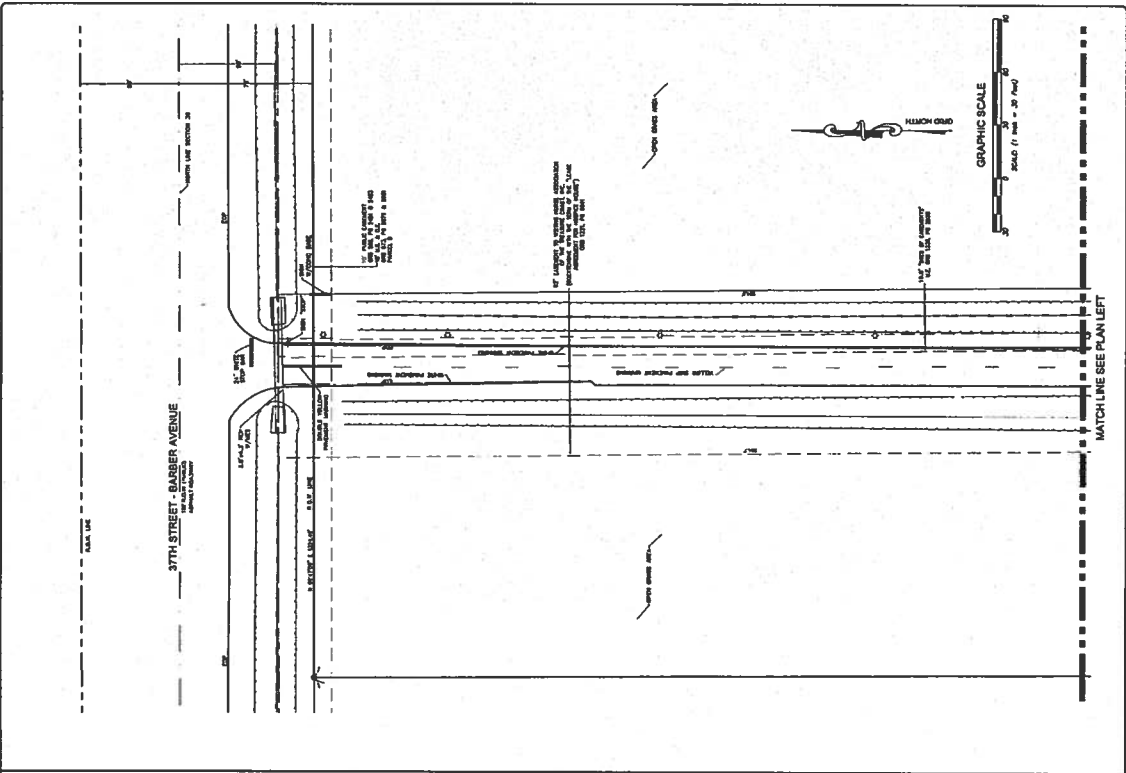
*Exhibit D*





<b>INDIAN RIVER COUNTY HOSPITAL DISTRICT</b> 3730 SEVENTH TERRACE #204-B VERO BEACH, FLORIDA 32909 TEL: 477-443-8880		<b>DATE:</b> 09/29/2011 <b>PROJECT:</b> 15-008 <b>APPROVED BY:</b> [Signature] <b>PREPARED BY:</b> [Signature] <b>SCALE:</b> 1" = 100'-0"	<b>DATE:</b> 09/29/2011 <b>PROJECT:</b> 15-008 <b>APPROVED BY:</b> [Signature] <b>PREPARED BY:</b> [Signature] <b>SCALE:</b> 1" = 100'-0"	<b>THIS SURVEY CONSISTS OF 4 SHEETS.</b> ONE IS NOT VALID WITHOUT THE OTHERS.	<b>ALTANSPS LAND TITLE SURVEY</b> A PORTION OF SEC. 36, TOWNSHIP 32 SOUTH, RANGE 38 EAST INDIAN RIVER COUNTY HOSPITAL DISTRICT INDIAN RIVER COUNTY, FLORIDA PARCELS 2 & 3	<b>SHEET</b> <b>2 of 4</b> Dwg. # 11000C
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<b>ALTANSP'S LAND TITLE SURVEY</b> A PORTION OF SEC. 36, TOWNSHIP 36 SOUTH, RANGE 36 EAST INDIAN RIVER COUNTY, FLORIDA PARCELS 2 & 3		<b>SHEET</b> <b>4 of 4</b> Date: 7/20/00
DATE: 06/20/00 PROJ. NO.: 11-4889 APPLICANT: INDIAN RIVER COUNTY FILE NAME: 11-4889.dwg PLOT: 11-4889.dwg		THIS SURVEY CONSENTS TO 4 SHEETS. ONE IS NOT VALID WITHOUT THE OTHERS.
<b>INDIAN RIVER COUNTY HOSPITAL DISTRICT</b> 3750 SEVENTH TERRACE VERO BEACH, FLORIDA 32960 TEL: 407-411-5850 FAX: 407-411-5850		<b>CARTER ASSOCIATES, INC.</b> CONSULTING ENGINEERS AND LAND SURVEYORS 1708 21st STREET, VERO BEACH, FL 32960 TEL: (772) 882-4191 FAX: (772) 882-7180

# EXHIBIT "E"

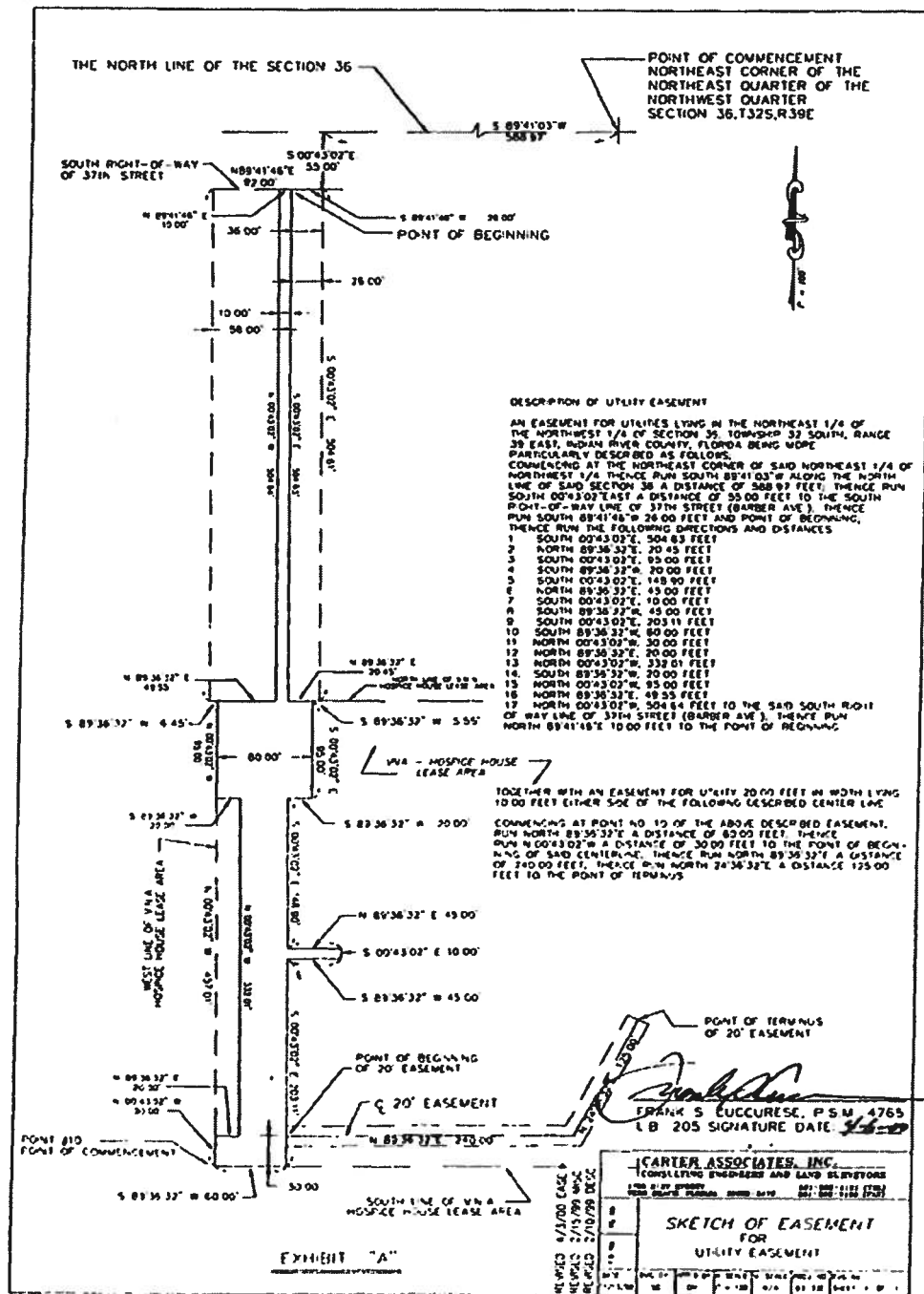


Exhibit E

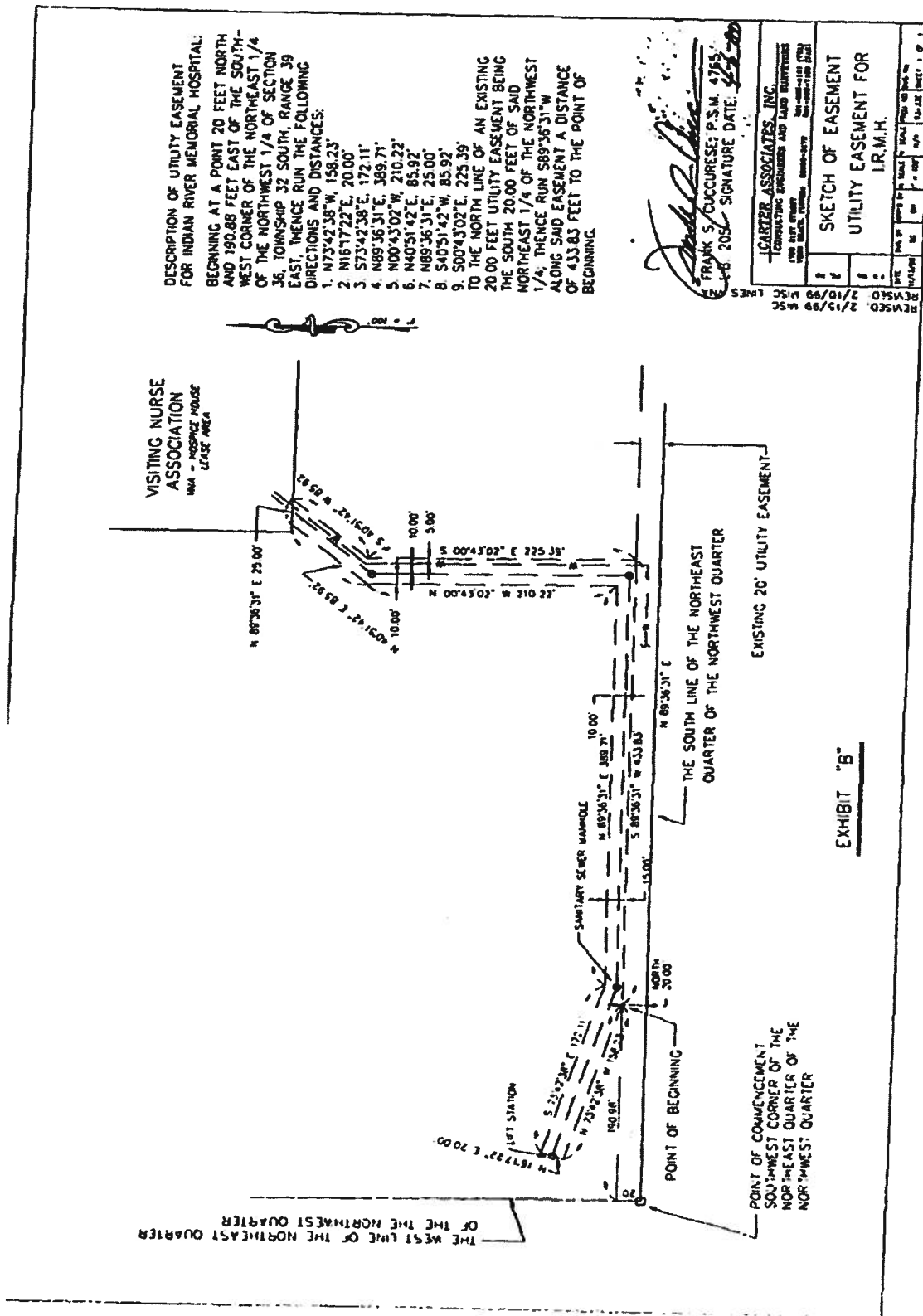


Exhibit E

This instrument prepared by  
and return to:

Zachary Bazara, Esq.  
Greenberg Traurig, P.A.  
401 East Las Olas Boulevard, Suite 2000  
Fort Lauderdale, FL 33301  
Phone: (954) 768-8288

**DECLARATION OF EASEMENTS,  
COVENANTS, CONDITIONS AND RESTRICTIONS**

**THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS** (the "**Declaration**") is made and entered into as of December 31, 2018, by **INDIAN RIVER COUNTY HOSPITAL DISTRICT**, an independent special district created by the Legislature of the State of Florida ("**Declarant**"), whose address is 3730 7th Terrace, Suite 204-B, Vero Beach, Florida 32960.

**RECITALS**

- A. Declarant is the owner of that certain real property situated in Indian River County, Florida, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference, which real property is made up of three (3) parcels, legally described on Exhibit A and referred to herein individually as the IRMC Parcel, the VNA Parcel and the Hospice House Parcel and collectively as the "Parcels". The VNA Parcel and the Hospice House Parcel are sometimes collectively referred to as the "District Parcels".
- B. Declarant has leased the IRMC Parcel to Indian River Memorial Hospital, Inc., a Florida not for profit corporation, d/b/a Indian River Medical Center ("**IRMC**") pursuant to that certain Amended and Restated Lease of Hospital Facilities and Agreement for Operation of Indian River Memorial Hospital dated November 15, 2012, as amended and restated by that certain Amended and Restated Lease Agreement dated January 1, 2019 (as same may be further amended, extended or renewed, the "**IRMC Lease**").
- C. Declarant has leased a portion of the Hospice House Parcel as more particularly described in Exhibit "B" to Visiting Nurse Association & Hospice Foundation, Inc., a Florida not for profit corporation ("**Hospice**"), under that certain Lease Agreement for Hospice House between Indian River County Hospital District and VNA dated December 19, 1996, as amended by Amendment to Lease Agreement for Hospice House dated August 17, 2000, Assignment of Lease dated August 18, 2000, and renewal Letter dated May 1, 2015 (the "**Hospice House Lease**").
- D. Declarant has leased a portion of the VNA Parcel as more particularly described in Exhibit "C" to Visiting Nurse Association of the Treasure Coast, Inc., a Florida not-for-



profit corporation ("VNA"), whose address is 1110 35th Lane, Vero Beach, Florida 32960, being the Lessee under that certain Amended and Restated Lease Agreement which began on June 1, 2017, as amended by First Amendment to Amended and Restated Lease Agreement dated October 20, 2017 (the "VNA Lease").

- E. Declarant desires to impose certain easements upon the Parcels for the benefit of the IRMC Parcel and for the benefit of the District Parcels, and to establish certain covenants, conditions and restrictions with respect to the District Parcels and the present and future owners and occupants thereof, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, the Declarant does hereby declare that the Parcels and all present and future owners and occupants of the Parcels shall be and hereby are subject to the terms, covenants, easements, restrictions and conditions hereinafter set forth in this Declaration, so that said Parcels shall be maintained, kept, sold and used in full compliance with and subject to this Declaration and, in connection therewith, Declarant declares as follows:

### AGREEMENTS

#### 1. Definitions.

For purposes hereof:

- 1.1 The term "IRMC" shall mean Indian River Memorial Hospital, Inc., a Florida not-for-profit corporation (its successors or assigns).
- 1.2 The term "IRMC Lease" is defined in the Recitals.
- 1.3 The term "Owner" or "Owners" shall mean the Declarant and any and all successors or assigns of such persons as the owner or owners of fee simple title to all or any portion of the real property covered hereby, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such real property.
- 1.4 The term "Parcel" or "Parcels" shall mean each separately identified parcel of real property now constituting a part of the real property subjected to this Declaration as described on Exhibit "A", that is, the IRMC Parcel, the VNA Parcel, the Hospice House Parcel and any future subdivisions thereof.
- 1.5 The term "Permittees" shall mean the tenant(s), subtenant(s) or occupant(s) of a Parcel, and the respective employees, agents, contractors, customers, invitees and licensees of (i) the Owner of such Parcel and/or (ii) such tenant(s), subtenant(s) or occupant(s).
- 1.6 The term "Survey" shall mean the survey attached hereto as Exhibit "D" and by reference made a part hereof. Except as may be otherwise provided in this Declaration, the Survey is for identification purposes only. The Survey also

depicts for reference purposes only some of the buildings, improvements, and easements located on the IRMC Parcel.

- 1.7 The term "**Perimeter Driveway**" shall mean that driveway and related driveway improvements, paving, curbing, entrances and exits, located near the Western boundary of the IRMC Parcel and the VNA Parcel (and sometimes referred to as Dr. Hugh McCrystal Drive and 11th Drive) and near the Southern Boundary of the VNA Parcel (and sometimes referred to as 35th Lane), as shown on the Survey.

2. **Grant of Easements over VNA Parcel and Hospice House Parcel in favor of IRMC Parcel.** Subject to any express conditions, limitations or reservations contained herein, Declarant hereby declares that the IRMC Parcel and all Owners and Permittees of the IRMC Parcel shall be benefited by the following non-exclusive, perpetual easements which are hereby imposed upon the VNA Parcel and the Hospice House Parcel, as more fully set forth below:

- (a) An easement for reasonable access, ingress and egress over the Perimeter Driveway located on the VNA Parcel, so as to provide for the passage of motor vehicles and pedestrians between the IRMC Parcel and all abutting streets or rights of way furnishing access to the VNA Parcel (if any).
- (b) An easement for utility purposes over currently existing utility lines and facilities located on the VNA Parcel.
- (c) An easement for drainage over drainage facilities located on the VNA Parcel and Hospice House Parcel if, and to the extent, such drainage is required in connection with the existing improvements and other improvements to be developed by Owners or Permittees of the IRMC Parcel.

3. **Grant of Easements over IRMC Parcel in favor of VNA Parcel.** Subject to any express conditions, limitations or reservations contained herein, Declarant hereby declares, and IRMC agrees, that the Owners and Permittees of the VNA Parcel shall be benefited by the following non-exclusive, perpetual easements which are hereby imposed upon the IRMC Parcel:

- (a) an easement for reasonable access, ingress and egress over the Perimeter Driveway located on the IRMC Parcel, so as to provide for the passage of motor vehicles and pedestrians between the VNA Parcel and abutting streets or rights of way furnishing access to the IRMC Parcel.
- (b) An easement for utility purposes over currently existing utility lines and facilities located on the IRMC Parcel.
- (c) An easement for drainage over drainage facilities located on the IRMC Parcel, if, and to the extent, such drainage is required in connection with the existing improvements and other improvements to be developed by Owners or Permittees of the VNA Parcel.

4. **Grant of Easements over IRMC Parcel in favor of Hospice House Parcel.** Subject to any express conditions, limitations or reservations contained herein, Declarant hereby declares, and IRMC agrees, that the Owners and Permittees of the Hospice House Parcel shall be benefited by the following non-exclusive, perpetual easements which are hereby imposed upon the IRMC Parcel:

- (a) A utility easement for the construction and maintenance of water, wastewater, and electric facilities over, under, across and upon the property described on Exhibit E, attached hereto and made a part hereof, with rights of ingress and egress thereto, but subject to existing matters of record, including, without limitation, any rights of the City of Vero Beach granted in that certain Deed of Easement & Subordination Agreement of Leasehold Estates recorded in Official Records Book 1336, at Page 2520, in the Public Records of Indian River County, Florida
- (b) An easement for drainage over drainage facilities located on the IRMC Parcel, if, and to the extent, such drainage is required in connection with the existing improvements and other improvements to be developed by Owners or Permittees of the Hospice House Parcel.

5. **Future Cooperation.** Owners and Permittees of the IRMC Parcel, VNA Parcel and Hospice House Parcel shall use their respective good faith, commercially reasonable efforts and reasonable diligence to cooperate to enter into any necessary utility and/or drainage easements or agreements that are required by a governmental authority having jurisdiction or are otherwise necessary to benefit any of the Parcels in the future so long as such easements do not interfere with any present or future improvements located on the Parcel.

6. **Maintenance.**

- 6.1 **General.** The Owner or the Permittees of each District Parcel shall maintain its respective Parcel in a clean and neat condition and shall take such measures as are necessary to control grass, weeds, blowing dust, dirt, litter or debris.
- 6.2 **Buildings and Appurtenances Thereto.** The Owner or the Permittees of each District Parcel covenant to keep and maintain, at their sole cost and expense, the building(s) located from time to time on such District Parcel in a good, safe, clean, and sightly order, condition and repair. No building or structure of any kind shall be erected or altered on the District Parcels until a complete set of the plans and specifications, elevation drawings, location and plot plan therefor (including, without limitation, utility lines, driveways, signs, parking areas, lights, curb-cuts, accessways, landscaping and site preparation and site development work), in detail and to scale, shall have been submitted to and approved by Owner of the IRMC Parcel and, during the term of the IRMC Lease, to IRMC. Within fifteen (15) business days after receipt of such plans and specifications, elevations, drawings, location and plot plans, Owner of the IRMC Parcel and, during the term of the IRMC Lease, IRMC, shall give Owner of the applicable District Parcel written notice of such party's approval or disapproval of such plans and

specifications, elevations, drawings, location and plot plans. If Owner of the IRMC Parcel and, during the term of the IRMC Lease, IRMC, fail to provide such notice within such fifteen (15) business day period, such party shall be deemed to have approved such of such plans and specifications, elevations, drawings, location and plot plans. Upon approval by Owner of the IRMC Parcel and, during the term of the IRMC Lease, IRMC, of such plans and specifications, elevations, drawings, location and plot plans (hereinafter, the "Approved Plans"), Owner of the District Parcel shall construct such improvements in substantial accordance with the Approved Plans and in accordance with all applicable governmental requirements and in a good, workmanlike and first-class condition.

- 6.3 All future buildings and structures on the District Parcels shall be of first quality construction and architecturally designed so that the exterior building design (including, without limitation, building elevations, materials, color, canopy, signs and other pertinent details) shall conform with the required building and zoning codes of the governmental entity which issues the building permit for such building or structure.

## 7. Restrictions.

### 7.1 District Parcels Restrictions.

- (a) Neither the Declarant, nor the Owner(s) nor the Permittees of the District Parcels shall at any time before January 1, 2029:
- (i) independently, or in concert with others, develop, acquire, own, manage, or engage in the business of an acute care hospital or an outpatient/ambulatory surgery center upon any District Parcel; or
  - (ii) engage in any of the "Prohibited Activities" defined below upon any District Parcel. Provided, this covenant shall not prohibit the Declarant from funding indigent care for residents living within the physical boundaries of Indian River County at any health care facility.

For purposes of this Section 6.1(a), "Prohibited Activities" are acute care services that compete directly with IRMC, including without limitation, the operation of an acute care general hospital, a specialty hospital, an ambulatory surgical center, an emergency care center, a clinical laboratory; any facility that provides diagnostic, ultrasound, radiology (which includes magnetic resonance imaging (MRI), computerized tomography (CT), and positron emission tomography (PET)), nuclear medicine, endoscopy, mammography, respiratory therapy, or rehabilitative therapy services; or any facility that provides cardiac or cancer diagnosis or treatment.

- (b) No portion of the District Parcels shall ever be used or occupied as a meeting hall; bingo hall; automotive maintenance or repair facility; for

industrial purposes; skating or roller rink; bowling alley; sales of boats, trailers, automobiles or other vehicles; cocktail lounge or bar serving alcoholic beverages (though, a full service restaurant located on any office building may serve alcoholic beverages as an ancillary service); funeral parlor; massage parlor; animal clinic; discotheque; dance hall; car wash; gas station; off-track betting establishment; amusement or game room as a primary use; so called "flea market"; second hand or used goods store; pool room; so called "head shops"; night club; gun range; any business or use which emits offensive odors, fumes, dust or vapors, is a public or private nuisance, emits loud noise or sounds which are objectionable, or creates fire, explosive or other hazard; warehousing; or adult book store or store selling or exhibiting pornographic materials.

- (c) All exterior building signs constructed upon the District Parcels shall be restricted to identification of the business or service located or provided therein, or reasonably required directional signage. No exterior building or free-standing sign shall utilize flashing, moving or audible lights or appurtenances.

#### 8. **No Rights in Public; No Implied Easements.**

Except as otherwise expressly provided herein, nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the IRMC Parcel or the District Parcels. No easements, except those expressly set forth herein, shall be implied by this Declaration.

#### 9. **Remedies and Enforcement.**

- 9.1 **All Legal and Equitable Remedies Available.** In the event of a breach or threatened breach by any Owner or its Permittees of a Parcel of any of the terms, covenants, restrictions or conditions hereof, the harmed party shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance. During the term of the IRMC Lease, IRMC shall have the right, but not the obligation, at its expense, to enforce this Declaration on behalf of the Owner of the IRMC Parcel.
- 9.2 **Remedies Cumulative.** The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.
- 9.3 **No Termination For Breach.** Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Parcel made in good faith for value, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of such Parcel covered hereby whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

- 9.4 Irreparable Harm. In the event of a violation or threat thereof of any of the provisions of paragraphs 2, 3 4, and/or 6 of this Declaration, each Owner agrees that such violation or threat thereof shall cause the non-defaulting Owner and/or its Permittees to suffer irreparable harm and such non-defaulting Owner and its Permittees shall have no adequate remedy at law. As a result, in the event of a violation or threat thereof of any of the provisions of paragraphs 2, 3, 4 and/or 6 of this Declaration, the non-defaulting Owner and IRMC, in addition to all remedies available at law or otherwise under this Declaration, shall be entitled to injunctive or other equitable relief to enjoin a violation or threat thereof of paragraphs 2, 3, 4 and/or 6 of this Declaration.

10. Term. The easements, covenants, conditions and restrictions contained in this Declaration shall be effective commencing on the date of recordation of this Declaration in the office of the Indian River County Recorder and shall remain in full force and effect thereafter in perpetuity, unless this Declaration is modified, amended, canceled or terminated by the written consent of all then record Owners of the IRMC Parcel, the VNA Parcel and the Hospice House Parcel in accordance with paragraph 11.2 hereof. This Declaration shall be subject to: (1) the rights of Hospice, as tenant, under the currently existing Hospice House Lease, as same may be extended or amended; (2) the rights of VNA, as tenant, under the currently existing VNA Lease, as same may be extended or amended; and (3) covenants, easements and restrictions of record, though this reference is not intended to reimpose same. Furthermore, and notwithstanding anything contained herein to the contrary, the provisions of Section 6 (Maintenance) and Section 7 (Restrictions) shall expressly not apply to: (i) Hospice as tenant or (potential future) fee owner of the Hospice House Parcel, or (ii) VNA as tenant or (potential future) fee owner of the VNA Parcel, it being understood that such exemption is personal to Hospice and VNA, and their successors by merger, consolidation, change of name, or reorganization.

11. Miscellaneous.

- 11.1 Attorneys' Fees. In the event a party (including IRMC) institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

11.2 Amendment.

- (a) Declarant agrees that the provisions of this Declaration may be modified or amended, in whole or in part, or terminated, only by the written consent of all record Owners of the IRMC Parcel, the VNA Parcel and the Hospice House Parcel, evidenced by a document that has been fully executed and acknowledged by all such record Owners and recorded in the official records of the County Recorder of Indian River County, Florida.
- (b) Notwithstanding subparagraph 11.2(a) above to the contrary, no termination of this Declaration and no modification or amendment of this Declaration shall be made nor shall the same be effective unless the same

has been expressly consented to in writing by IRMC (during the continuance of the IRMC Lease).

- 11.3 Consents. Wherever in this Declaration the consent or approval of an Owner, IRMC, VNA or Hospice is required, unless otherwise expressly provided herein, such consent or approval shall not be unreasonably withheld, conditioned or delayed. Any request for consent or approval shall: (a) be in writing; (b) specify the section hereof which requires that such notice be given or that such consent or approval be obtained; and (c) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. The consent of a party under this Declaration, to be effective, must be given, denied or conditioned expressly and in writing. During the continuance of the IRMC Lease, any consent by the Owner of the IRMC Parcel, to be effective, shall also require the consent of IRMC.
- 11.4 Covenants to Run with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs and personal representatives.
- 11.5 Grantee's Acceptance. The grantee of any Parcel or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from an original party or from a subsequent owner of such Parcel, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions and obligations contained herein. By such acceptance, any such grantee shall for himself and his successors, assigns, heirs, and personal representatives, covenant, consent and agree to and with the other party, to keep, observe, comply with and perform the obligations and agreements set forth herein with respect to the property so acquired by such grantee.
- 11.6 Severability. Each provision of this Declaration and the application thereof to the IRMC Parcel, the VNA Parcel and the Hospice House Parcel are hereby declared to be independent of and severable from the remainder of this Declaration. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Declaration. In the event the validity or enforceability of any provision of this Declaration is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared. Ownership of all Parcels by the same person or entity shall not terminate this Declaration nor in any manner affect or impair the validity or enforceability of this Declaration.

- 11.7 Entire Agreement. This Declaration contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein and all prior representations, negotiations and understandings are superseded hereby.
- 11.8 Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested or by other national overnight courier company or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party and IRMC may change from time to time their respective address for notice hereunder by like notice to the other party and IRMC. Notice given by any Owner hereunder to be effective shall also simultaneously be delivered to IRMC (during the continuance of the IRMC Lease).

The notice addresses of Declarant and IRMC are as follows:

**IRMC:** Indian River Memorial Hospital, Inc.  
Attention: President  
1000 36th St.  
Vero Beach, Florida 32960

**With a Copy to:** The Cleveland Clinic Foundation  
9500 Euclid Avenue  
NA-4  
Cleveland Clinic, Ohio 44195  
Fax: (216) 444-0088  
Attention: Tomislav Mihaljevic

**Declarant:** Indian River County Hospital District  
Attention: Executive Director  
3730 7th Terrace, Suite 204-B  
Vero Beach, Florida 32960

**With a Copy to:** Law Offices of Jennifer D. Peshke, P.A.  
Jennifer D. Peshke, Esq.  
4733 North Highway A1A  
Vero Beach, Florida 32963

- 11.9 Governing Law and Venue. The laws of Florida shall govern the interpretation, validity, performance and enforcement of this Declaration. Venue shall lie exclusively in Indian River County, Florida.
- 11.10 Bankruptcy. In the event of any bankruptcy affecting any Owner or tenant of any Parcel, the parties agree that this Declaration shall, to the maximum extent permitted by law, be considered an agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

***[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]***



IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first written above.

Signed, sealed and delivered  
in our presence:

Kate Voss  
(Signature of Witness #1)  
Kate Voss  
(Printed name of Witness #1)

DECLARANT:

INDIAN RIVER COUNTY HOSPITAL  
DISTRICT

By: Marybeth Cunningham  
Name: Marybeth Cunningham  
Title: Trustee and Chairman

Jennifer Frederick  
(Signature of Witness #2)  
Jennifer Frederick  
(Printed name of Witness #2)

STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

THE FOREGOING INSTRUMENT was acknowledged before me this 17<sup>th</sup> day of December, 2018, by Marybeth Cunningham, Trustee and Chairman of **INDIAN RIVER COUNTY HOSPITAL DISTRICT**, who is (check one) X personally known to me, or \_\_\_\_\_ produced \_\_\_\_\_ as identification.

[AFFIX NOTARY SEAL] **WILLIAM A. BOYLES**  
Notary Public, State of Florida  
My comm. expires Aug. 10, 2022  
No. GG 219531  
Bonded thru Ashton Agency, Inc. (800)451-4854

William A. Boyles  
Notary Public Signature  
Print Notary Name: William A. Boyles  
My commission expires: \_\_\_\_\_

[Declaration Signature Page]

## JOINDER AND CONSENT TO DECLARATION

The undersigned, Indian River Memorial Hospital, Inc., a Florida not for profit corporation, d/b/a Indian River Medical Center ("IRMC"), whose address is 1000 36th St., Vero Beach, Florida 32960, being the Lessee under that certain Amended and Restated Lease of Hospital Facilities and Agreement for Operation of Indian River Memorial Hospital dated November 15, 2012, as amended and restated by that certain Amended and Restated Lease Agreement dated January 1, 2019, hereby joins in and consents to the foregoing Declaration.

made effective as of December 31, 2018,

Signed, sealed and delivered  
in our presence:

INDIAN RIVER MEMORIAL HOSPITAL, INC.,  
a Florida not for profit corporation, d/b/a Indian  
River Medical Center

Geraldine McPherson Smith  
(Signature of Witness #1)

By: Wayne T. Hockmeyer  
Name: Wayne T. Hockmeyer, Ph.D.  
Title: Chairman

Geraldine McPherson Smith  
(Printed name of Witness #1)

Cynthia S. Goodrich  
(Signature of Witness #2)

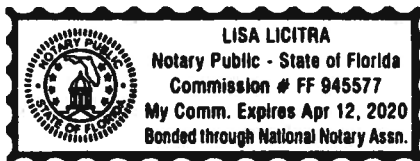
Cynthia S. Goodrich  
(Printed name of Witness #2)

STATE OF FLORIDA  
COUNTY OF Indian River

THE FOREGOING INSTRUMENT was acknowledged before me this 12<sup>th</sup> day of December, 2018, by Wayne T. Hockmeyer, Ph.D., as Chairman of Indian River Memorial Hospital, Inc., a Florida not for profit corporation, d/b/a Indian River Medical Center, on behalf thereof, who is (check one): ☒ personally known to me, or ☐ produced as identification.

[AFFIX NOTARY SEAL]

Lisa Licitra  
Notary Public Signature  
Print Notary Name: Lisa Licitra  
My commission expires: 4-12-2020



[Joinder Signature Page]

## JOINDER AND CONSENT TO DECLARATION

The undersigned, **Visiting Nurse Association & Hospice Foundation, Inc.**, a Florida not for profit corporation ("**Hospice**"), whose address is 901 37th St., Vero Beach, FL 32960, being the Lessee under that certain Lease Agreement for Hospice House between Indian River County Hospital District and VNA dated December 19, 1996, as amended by Amendment to Lease Agreement for Hospice House dated August 17, 2000, Assignment of Lease dated August 18, 2000, and renewal Letter dated May 1, 2015, hereby joins in and consents to the foregoing Declaration.

Signed, sealed and delivered  
in our presence:

Deborah Hawkins

(Signature of Witness #1)

Deborah Hawkins

(Printed name of Witness #1)

Eileen M. Hanley

(Signature of Witness #2)

Eileen M. Hanley

(Printed name of Witness #2)

STATE OF FLORIDA  
COUNTY OF Indian River

VISITING NURSE ASSOCIATION & HOSPICE  
FOUNDATION, INC., a Florida not for profit  
corporation

By: Lundy S. Fields

Name: Lundy S. Fields

Title: President/CEO

THE FOREGOING INSTRUMENT was acknowledged before me this 23rd day of  
October, 2018, by Lundy S. Fields, as  
President and CEO of Visiting Nurse Association & Hospice Foundation, Inc., a  
Florida not for profit corporation, on behalf thereof, who is (check one): ☒ personally known to  
me, or ☐ produced \_\_\_\_\_ as identification.

[AFFIX NOTARY SEAL]

Eileen M. Hanley  
Notary Public Signature  
Print Notary Name: EILEEN M. HANLEY  
My commission expires: \_\_\_\_\_



[Joinder Signature Page]

## JOINDER AND CONSENT TO DECLARATION

The undersigned, **Visiting Nurse Association of the Treasure Coast, Inc.**, a Florida not-for-profit corporation ("**VNA**"), whose address is 1110 35th Lane, Vero Beach, Florida 32960, being the Lessee under that certain Amended and Restated Lease Agreement which began on June 1, 2017, as amended by First Amendment to Amended and Restated Lease Agreement dated October 20, 2017, hereby joins in and consents to the foregoing Declaration.

Signed, sealed and delivered  
in our presence:

*Robert Hawkins*  
(Signature of Witness #1)

Deborah Hawkins  
(Printed name of Witness #1)

*Eileen M. Hanley*  
(Signature of Witness #2)

Eileen M. Hanley  
(Printed name of Witness #2)

VISITING NURSE ASSOCIATION OF THE  
TREASURE COAST, INC., a Florida not for profit  
corporation

By: *Lundy S. Fields*

Name: Lundy S. Fields

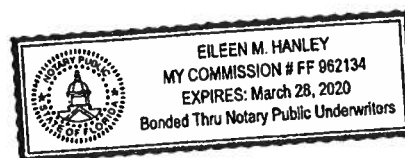
Title: President/CEO

STATE OF FLORIDA  
COUNTY OF Indian River

THE FOREGOING INSTRUMENT was acknowledged before me this 23rd day of  
October, 2018, by Lundy S. Fields, as  
President and CEO of Visiting Nurse Association of the Treasure Coast, Inc., a  
Florida not for profit corporation, on behalf thereof, who is (check one): ☒ personally known to  
me, or ☐ produced \_\_\_\_\_ as identification.

[AFFIX NOTARY SEAL]

*Eileen M. Hanley*  
Notary Public Signature  
Print Notary Name: EILEEN M. HANLEY  
My commission expires: \_\_\_\_\_



[Joinder Signature Page]

**EXHIBIT A**

**Legal Descriptions of IRMC Parcel, VNA Parcel and Hospice House Parcel**

**IRMC PARCEL:**

**PARCEL A: (Main Hospital)**

The Northwest 1/4 of the Northwest 1/4 and the Northeast 1/4 of the Northwest 1/4 of Section 36, Township 32 South, Range 39 East, Indian River County, Florida.

**LESS AND EXCEPT PARCELS 1, 2 AND 3 AS SET FORTH BELOW:**

Parcel 1: That parcel described as Parcel No. 118 in Deed to the State of Florida, recorded June 20, 1977, in Official Records Book 553, Page 2835, Public Records of Indian River County, Florida and that parcel described as Parcel No. 801 in Deed to the State of Florida recorded June 20, 1977, in Official Records Book 553, Page 2837, Public Records of Indian River County, Florida.

Also described as: The North 75.00 feet thereof for 37th Street/Barber Avenue road right-of-way.

Parcel 2: The South 260.00 feet of the West 934.00 feet of said Northwest 1/4 of the Northwest 1/4 Section 36, Township 32 South, Range 39 East; and,

Parcel 3: That certain Premises including "VNA Hospice House" more particularly described as follows:

The Northeast 1/4 of the Northwest 1/4 of Section 36, Township 32 South, Range 39 East, less and except the West 520.00 feet thereof; less and except the East 275.00 feet of the South 800.00 feet thereof; less and except the South 310.00 feet thereof; and less and except the North 75.00 feet thereof.

**HOSPICE HOUSE PARCEL:**

The Northeast 1/4 of the Northwest 1/4 of Section 36, Township 32 South, Range 39 East, less and except the West 520.00 feet thereof; less and except the East 275.00 feet of the South 800.00 feet thereof; less and except the South 310.00 feet thereof; and less and except the North 75.00 feet thereof.

**VNA PARCEL:**

The South 260.00 feet of the West 934.00 feet of said Northwest 1/4 of the Northwest 1/4 Section 36, Township 32 South, Range 39 East.

*Exhibit A*

**EXHIBIT "B"**

**Description of Property Leased to Hospice House**

The North 457.01 feet of the South 767.01 feet of the West 400.00 feet of the East 674.52 feet of the Northeast 1/4 of the Northwest 1/4 of Section 36, Township 32 South, Range 39 East, Indian River County, Florida being more particularly described as follows:

Commencing at the Northeast corner of the Northwest 1/4 of Section 36, Township 32 South, Range 39 East, run S 89°41'03" W along the north line of said Section 36 a distance of 274.52 feet; thence run S 00°43'02" E and parallel to the east line of said Northwest 1/4 a distance of 559.20 feet to the Point of Beginning; thence run S 89°36'32" W and parallel to the South line of the Northeast 1/4 of said Northwest 1/4 a distance of 400.00 feet; thence run S 00°43'02" E and parallel to the East line of said Northwest 1/4 a distance of 457.01 feet; thence run N 89°36'32" E and parallel to the said South line a distance of 400.00 feet; thence run N 00°43'02" W and parallel to the East line of said Northwest 1/4 a distance of 457.01 feet to the Point of Beginning.

*Exhibit B*

**EXHIBIT "C"**

**Description of Property Leased to VNA**

The buildings and improvements located on the following described property:

The South 260.00 feet of the West 934.00 feet of said Northwest 1/4 of the Northwest 1/4 Section 36, Township 32 South, Range 39 East.

*Exhibit C*

**EXHIBIT "D"**

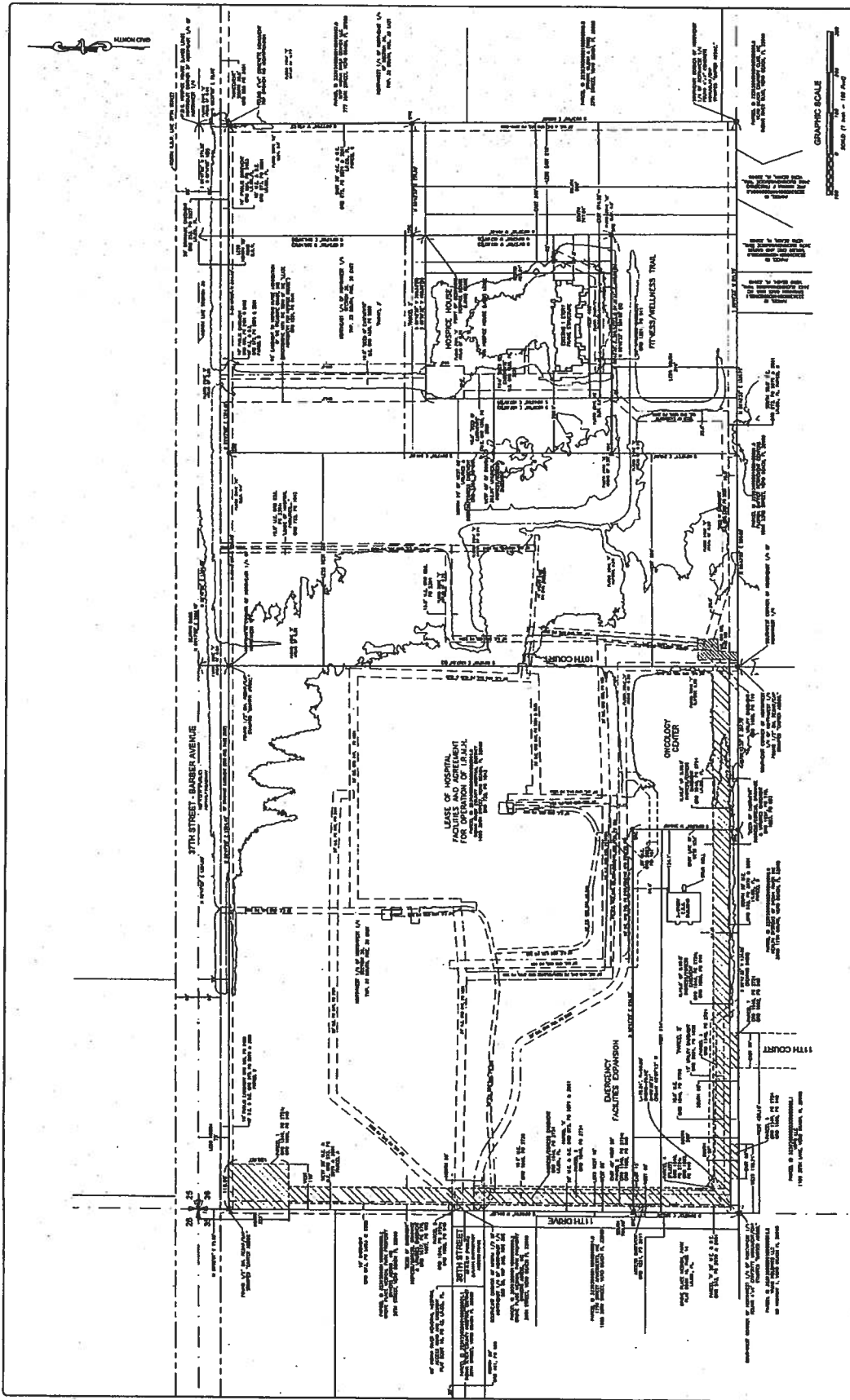
**Survey**

**[ATTACH]**

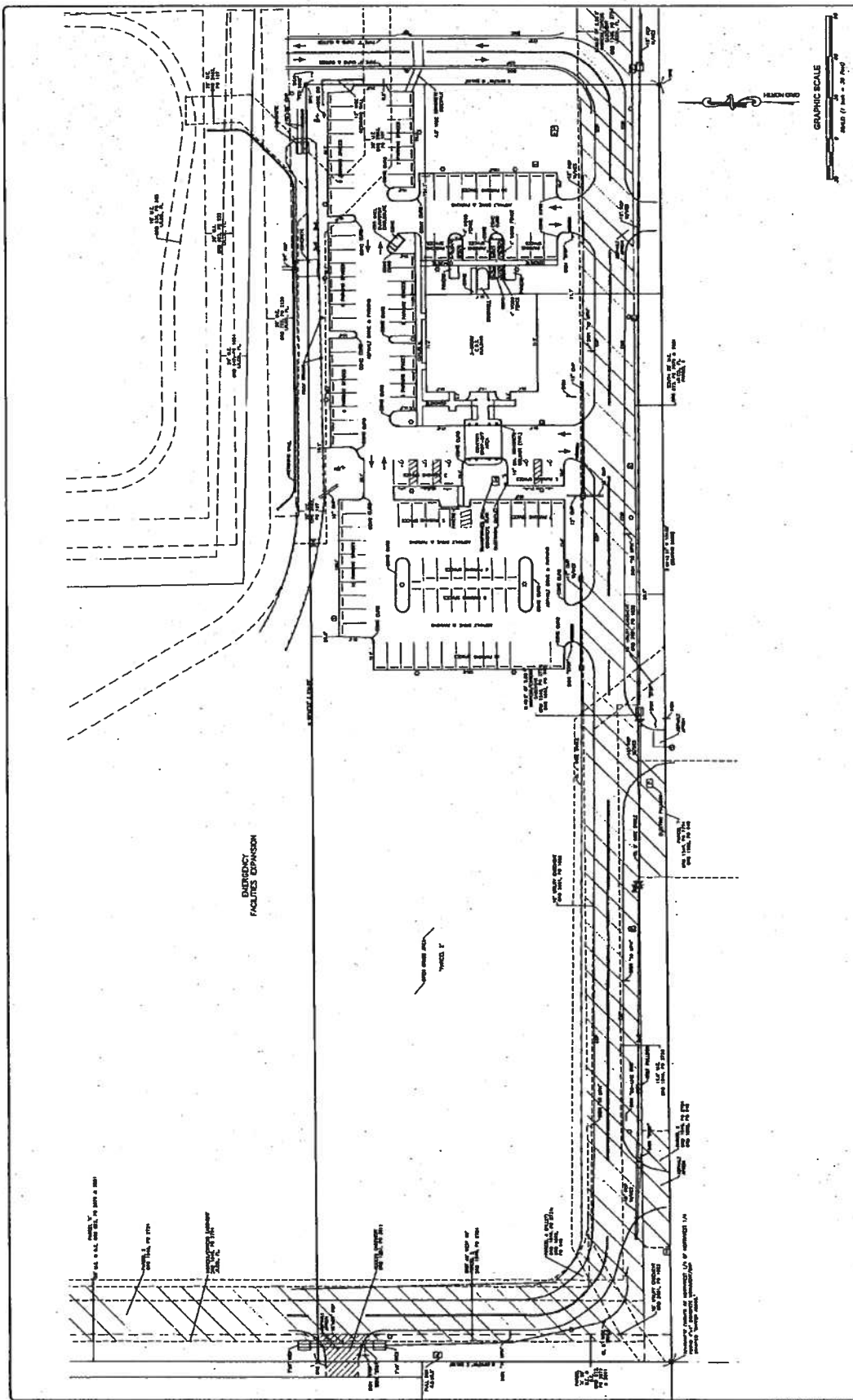
*Exhibit D*



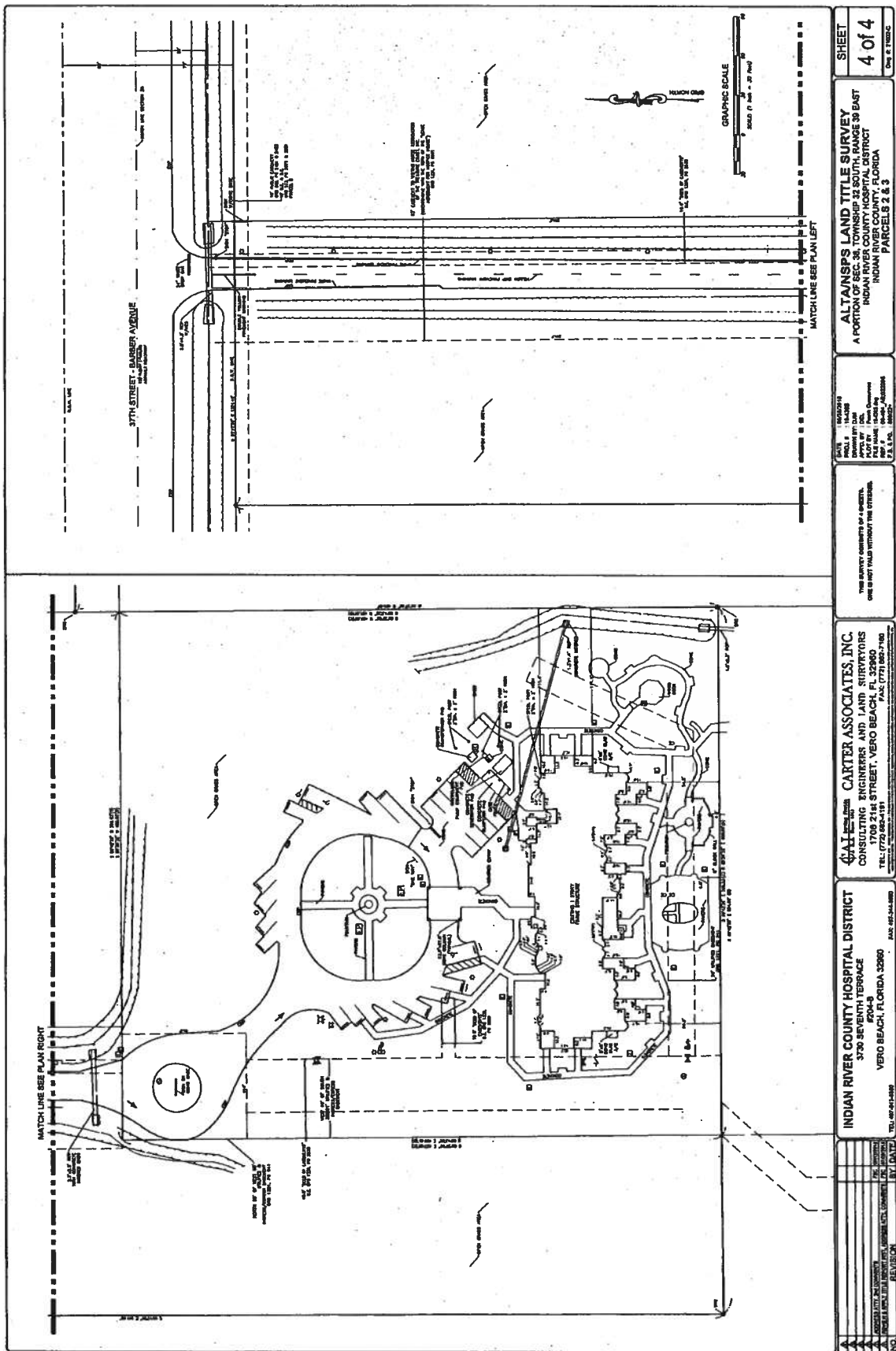




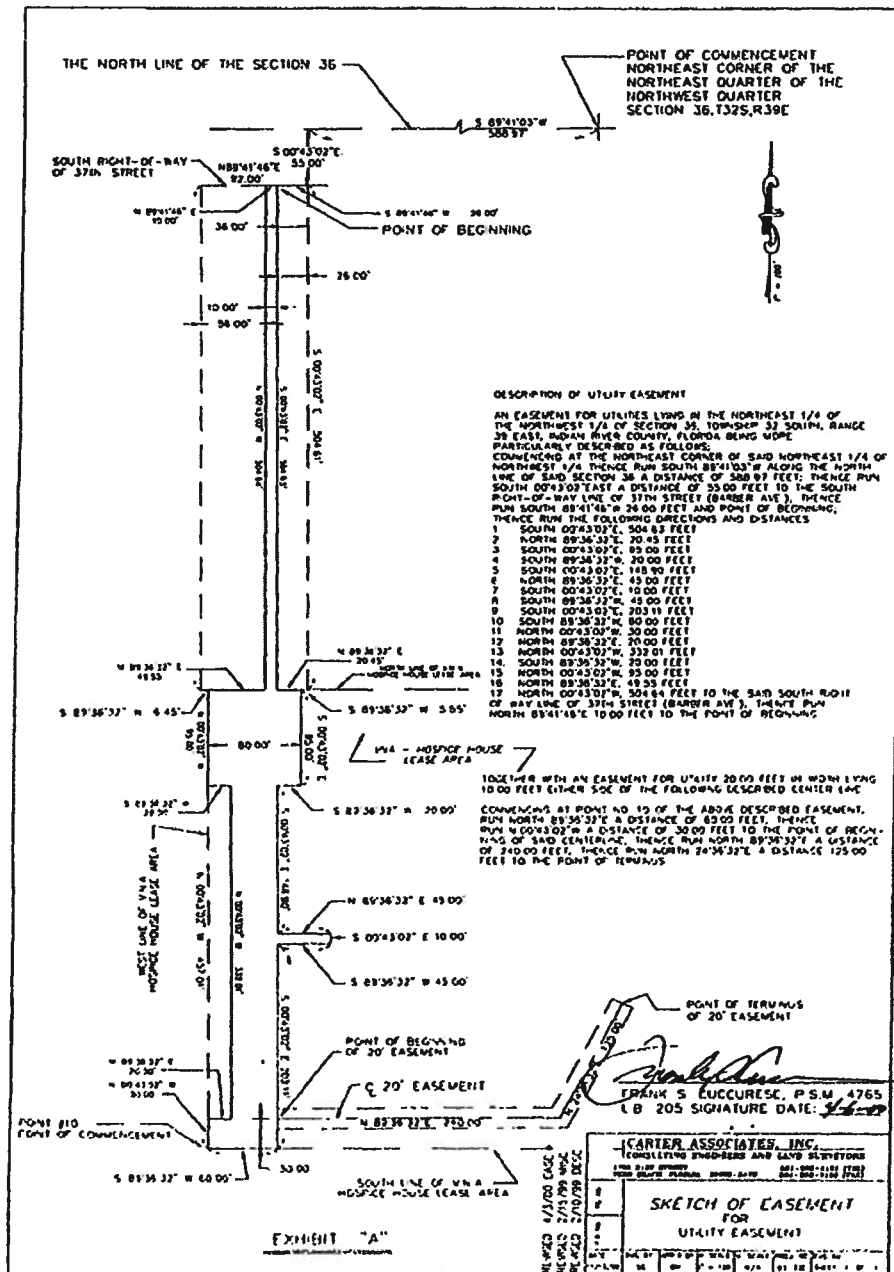
<b>INDIAN RIVER COUNTY HOSPITAL DISTRICT</b> 2700 SEVENTH TERRACE VERO BEACH, FLORIDA 32900 TEL: (772) 442-6666 FAX: (772) 442-6668		<b>CARTER ASSOCIATES, INC.</b> CONSULTING ENGINEERS AND LAND SURVEYORS 1708 21st STREET, VERO BEACH, FL 32900 TEL: (772) 882-1181 FAX: (772) 882-7180		THIS SURVEY CONSISTS OF 4 SHEETS. THIS IS NOT VALID WITHOUT THE OTHERS.		DESIGNER: PROJECT NO.: 18-432 DATE: 10/1/01 DRAWN BY: J. P. CARTER CHECKED BY: J. P. CARTER SCALE: 1" = 40'		<b>ALTA/NSPS LAND TITLE SURVEY</b> A PORTION OF SEC. 36, TOWNSHIP 32 SOUTH, RANGE 38 EAST INDIAN RIVER COUNTY HOSPITAL DISTRICT INDIAN RIVER, FLORIDA PARCELS 2 & 3		<b>SHEET</b> <b>2 of 4</b> Page 1 of 2	
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<b>INDIAN RIVER COUNTY HOSPITAL DISTRICT</b> 3730 SEVENTH TERRACE #200-8 VERO BEACH, FLORIDA 32980 TEL: (888) 444-4444		<b>CARTER ASSOCIATES, INC.</b> CONSULTING ENGINEERS AND LAND SURVEYORS 1708 21st STREET, VERO BEACH, FL 32980 TEL: (772) 888-4181 FAX: (772) 888-7180	THIS SURVEY CONSISTS OF 4 SHEETS. ONE IS NOT VALID WITHOUT THE OTHERS.	DATE: 05/05/2010 PROJECT: 10-0000 SHEET: 3 OF 4 DRAWN BY: J. L. CARTER CHECKED BY: J. L. CARTER SCALE: AS SHOWN	<b>ALTANSPS LAND TITLE SURVEY</b> A PORTION OF THE LAND SURVEY OF THE 38 EAST INDIAN RIVER COUNTY HOSPITAL DISTRICT INDIAN RIVER COUNTY, FLORIDA PARCELS 2 & 3 SHEET <b>3 of 4</b> Dwg. # 10000-2
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**EXHIBIT "E"**



*Exhibit E*

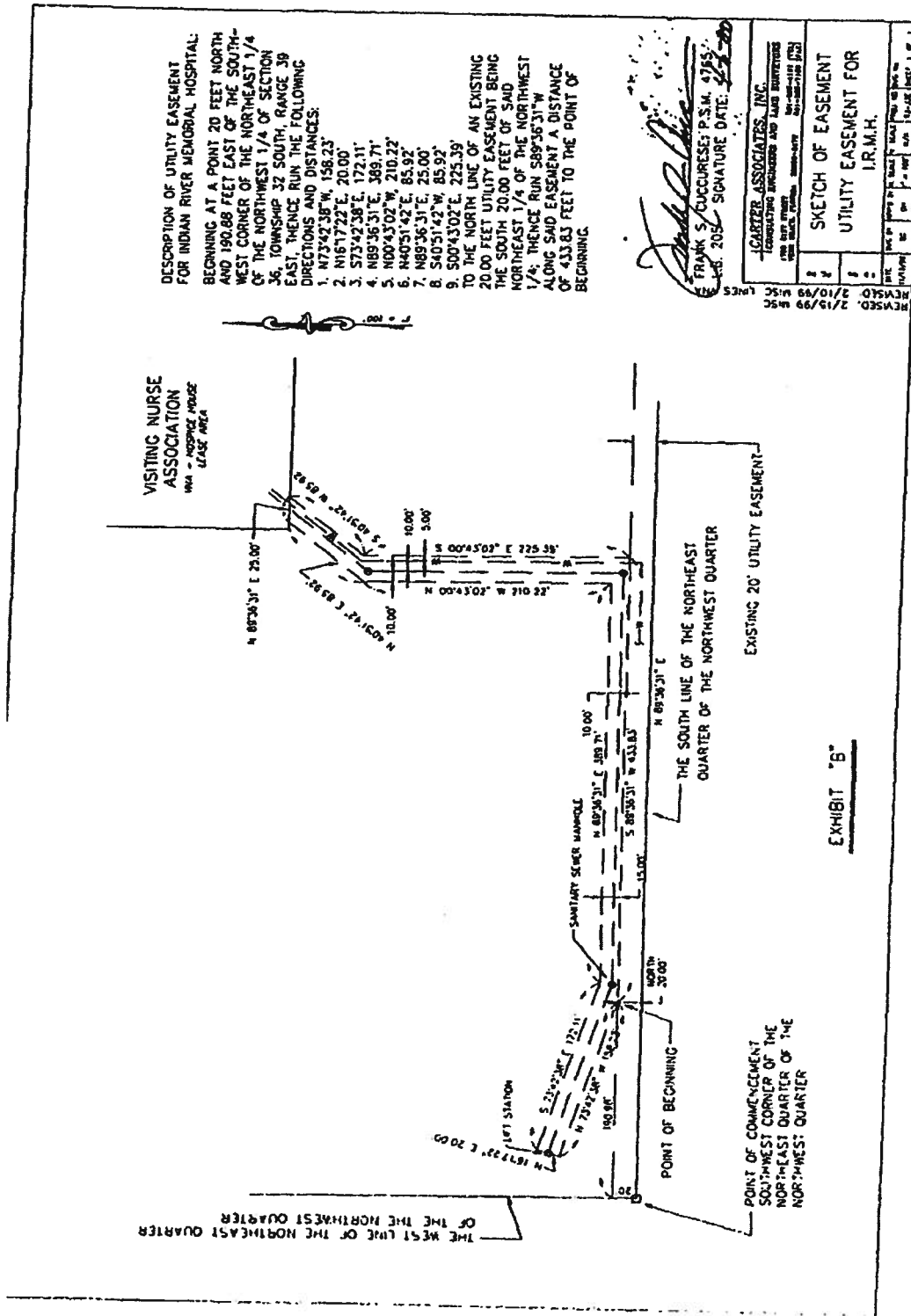


Exhibit E

FTL 111846677v5 999902.000179

V261VI - # 12573897 v13