

West Volusia Hospital Authority
BOARD OF COMMISSIONERS SPECIAL MEETING
February 20, 2020 4:00 p.m.
DeLand City Hall
120 S. Florida Avenue, DeLand, FL
AGENDA

1. Call to Order
2. Approval of Proposed Agenda
3. Citizens Comments
4. Discussion Items
 - A. Budget and Healthcare Financing Matters
 - B. WVHA Future Funding AdventHealth
DeLand/AdventHealth Fish Memorial
5. Commissioner Comments
6. Adjournment

AGREEMENT
(Florida Hospital DeLand)

THIS AGREEMENT (the "Agreement") is made and entered by and between WEST VOLUSIA HOSPITAL AUTHORITY, a special taxing district, public body corporate and politic of the State of Florida ("WVHA") and MEMORIAL HOSPITAL-WEST VOLUSIA, INC., a Florida not for profit corporation ("MH-WV").

1. **Background; Agreement.** Prior to the Effective Date, as hereafter defined, WVHA, as owner, leased to MH-WV the West Volusia Memorial Hospital (the "Hospital"). WVHA and MH-WV have executed that certain Termination of Lease, Settlement and Asset Transfer Agreement to take effect at Midnight on September 30, 2000, pursuant to which, among other things, WVHA will transfer to MH-WV the assets (including real property, building and equipment) of the Hospital and MH-WV will grant WVHA a full release in accordance with the terms and conditions thereof. MH-WV acknowledges that WVHA has an interest in ensuring that the real property described in Schedule 1, attached hereto and incorporated herein by reference, conveyed pursuant to the Termination of Lease, Settlement and Asset Transfer Agreement continues to provide certain healthcare services in a manner consistent with appropriate standards after MH-WV receives title to the Hospital, and MH-WV has agreed to offer such healthcare services and maintain said standards. Therefore, in order to memorialize MH-WV's commitments and agreements, MH-WV has agreed to enter into this Agreement with WVHA. In consideration of the premises, the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to the terms, covenants and provisions set forth in this Agreement.
2. **Term.** This Agreement shall become effective at Midnight on September 30, 2000 (the "Effective Date") and shall automatically expire at Midnight on September 30, 2020.
3. **Covenants of MH-WV.** Each of the covenants set forth below shall continue to be given effect during the term of this Agreement until the earlier of the following two dates: (i) the expiration date set forth in the applicable covenant; or (ii) the date on which the covenant is waived by WVHA.

- (a) Maintain Hospital. MH-WV shall maintain the Hospital as a licensed general acute care hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or equivalent accrediting body. Services offered shall include a twenty-four hour/seven day emergency room department. Services offered at the Hospital shall be similar to those provided at other general acute care community hospitals operating in Volusia County, Florida (e.g., Florida Hospital Fish Memorial, etc.). MH-WV shall inform WVHA of the continued accreditation of the Hospital at the regularly scheduled meeting of the WVHA governing board next following the issuance of such accreditation by the public/private entity having jurisdiction.
- (b) Maintain Capacity. The licensed bed capacity of the Hospital shall not be less than one hundred fifty-six (156) licensed beds.
- (c) Name. MH-WV shall obtain approval from Adventist Health System/Sunbelt, Inc. to use the name "Florida Hospital DeLand" in association with the operations of the Hospital and shall commence using the name October 1, 2000, and continuously thereafter for so long as MH-WV or its affiliates operate the Hospital.
- (d) Maintain Services. MH-WV will neither (i) discontinue any medical service provided at the Hospital on the Effective Date, nor (ii) discontinue or move any existing program to another location if such action would adversely affect the services presently provided at the Hospital; provided, however, the foregoing shall not apply if MH-WV has managed the program or service in accordance with accepted hospital management practices and MH-WV nevertheless reasonably determines that continuation of such program or service at the Hospital will have a material adverse effect on the financial condition of the Hospital.
- (e) Indigent Patients. MH-WV agrees to provide medical care to indigent patients who suffer from an "emergency medical condition" (as the term is defined in Florida Statutes Section 395.002(9), as

amended, and/or 42 U.S.C. Section 1395dd(3), as amended) on a non-discriminatory basis and without regard to the individual's ability to pay, and further agrees that a patient meeting applicable WVHA, State of Florida and/or federal indigency requirements and who is treated for an "emergency medical condition" shall not be billed by the Hospital, provided, however, MH-WV shall have a right of recovery from any patient who receives payment and/or reimbursement from a third party for medical services rendered.

- (f) Medical Staff. The medical staff of the Hospital will continue to be either an independent medical staff or a division of the medical staff of Southwest Volusia Healthcare Corporation d/b/a Florida Hospital Fish Memorial.
- (g) Hospital Board. The operations of the Hospital shall be governed by an operating board (the "Hospital Board") which will be appointed by the membership of MH-WV and shall consist of at least ten (10) members. All members of the Hospital Board will be voting members. At least four (4) of the members of the Hospital Board shall be residents of the DeLand, Florida area (the "Community Members"), one of whom shall be the incumbent chief of staff of the Hospital, if he or she is willing to serve. Each Community Member:
 - (i) shall have demonstrated knowledge and/or experience in the business of healthcare;
 - (ii) will be familiar with the community served by the Hospital; and
 - (iii) will have a proven history of working well with others so the organization will move forward and be successful.
- (h) Right of First Refusal. If MH-WV decides to solicit offers in writing or if MH-WV's Board of Directors approves any solicitation of offers, written or otherwise, for the sale of all or any material portion of the Hospital (outside the ordinary course of business), MH-WV shall provide WVHA with at least fifteen (15) days notice prior to sending out any

written solicitation or otherwise making any solicitation approved by MH-WV's Board of Directors. In the event that MH-WV receives a bona fide offer (the "Offer"), which Offer to be bona fide must be in writing stating the terms of the Offer and signed by the prospective purchaser, to buy all or any material portion of the Hospital (outside the ordinary course of business), MH-WV, if it desires to accept such Offer, shall first give written notice to WVHA, which written notice shall contain a copy of the Offer and a statement by MH-WV that it intends to accept the Offer. Within thirty (30) days after the giving of said notice, WVHA shall have the right to exercise its option to purchase with its own funds or funds obtained through financing all but not less than all of the Hospital assets sought to be sold by MH-WV and may so exercise said option by giving a written notice within said thirty (30) day period to MH-WV. If WVHA does so exercise said option, it shall have a period of sixty (60) days to secure financing to purchase such assets. WVHA shall purchase and MH-WV shall sell to WVHA such portion of the Hospital on the same terms and conditions set forth in the Offer. Such purchase by WVHA shall occur (i) within the time frame for closing set forth in the Offer, or (ii) fifteen (15) days after the expiration of such aforesaid sixty (60) day period, whichever occurs later, unless prevented by governmental or regulatory action. If WVHA does not within said thirty (30) day period exercise its option to purchase the portion of the Hospital being offered for sale, or if the sale is not closed within the time frame for closing set forth in the Offer (unless prevented by governmental or regulatory action), MH-WV may proceed to sell such portion being offered for sale in accordance with the terms of the Offer. In the event MH-WV intends to sell such portion of the Hospital or any part thereof on terms different from those set forth in the Offer, or to a person or entity other than the original offeror, the same shall constitute a new offer requiring the giving of notice as set forth herein. Any transfer made in violation of this provision shall be null and void.

4. Miscellaneous.

- (a) Attorneys' Fees and Costs. If any legal action or other proceeding is brought for the enforcement of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, including those related to appeals.
- (b) Notices. Either party may give any notice hereunder to the other party by manual or courier service delivery to the recipient at the recipient's principal office or by mailing certified or registered mail to the recipient at the recipient's address set forth below. Either party may change its address by giving written notice thereof to the other party but the change shall not be effective until notice of the change is received by the other party. Notice given by registered or certified mail, properly addressed and with postage fully prepaid, is deemed received three (3) days after being deposited in the United States mail within the continental United States. Notice given by manual or courier service delivery is deemed received only when notice is physically received by the recipient. If the last day for giving any notice falls on a Saturday, Sunday or post office holiday, the time is extended to the next day that is not a Saturday, Sunday or post office holiday.

If to WVHA:

West Volusia Hospital Authority
131 New York Avenue, 3rd Floor
DeLand, Florida 32724
Attn: Chairman

With a copy to:

Landis Graham French Husfeld Sherman & Ford
145 East Rich Avenue
DeLand, Florida 32724
Attn: Channing Coolidge, Jr., Esq.
William E. Sherman, Esq.

If to MH-WV:

Memorial Hospital-West Volusia, Inc.
111 North Orlando Avenue
Winter Park, Florida 32789
Attn: Sandra K. Johnson
T.L. Trimble, Esq.

With a copy to:

Gray Harris & Robinson, P.A.
301 East Pine Street, Suite 1400
Orlando, Florida 32801
Attn: Borron J. Owen, Jr., Esq.

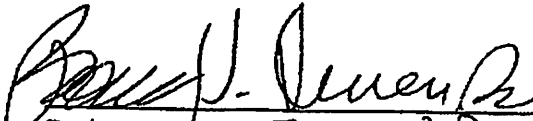
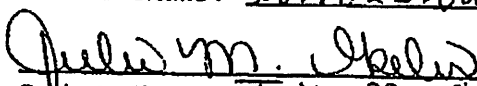
- (c) Successors and Assigns. The provisions of this Agreement shall inure to the benefit of, and shall bind the successors and assigns of the parties hereto. The parties envision pursuant to Section 4(g) that Adventist Health System/Sunbelt, Inc. shall acquire MH-WV, including the assets of the Hospital and its related organizations. This Agreement (including the rights and obligations) shall be binding on MH-WV and any successor or assign of MH-WV.
- (d) Partial Invalidity. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.
- (e) Specific Performance. The parties hereto acknowledge the special and unique character of the rights and obligations contained herein and further acknowledge that should either party fail to fully perform its obligations hereunder, the other party could not be made fully whole by monetary damages alone. Accordingly, the parties hereby agree that in the event of a breach by either party, the non-breaching party shall be entitled to such equitable relief as a court of competent jurisdiction may order, including but not limited to specific performance of this Agreement or the entry of an order for temporary or permanent injunction. The foregoing provisions are in addition to and not in

limitation of any other remedies the parties may be entitled to under law or equity.

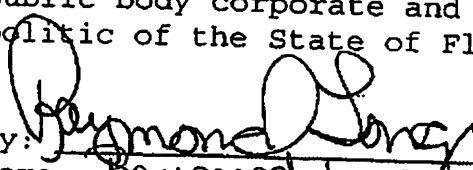
- (f) Governing Law. The laws of the State of Florida shall govern the validity, construction and performance of this Agreement.
- (g) Structure of Transaction. This Agreement together with the (i) Indigent Care Reimbursement Agreement and (ii) the Termination of Lease, Settlement and Asset Transfer Agreement entered into between the parties to this Agreement, among other parties, is conditioned on the execution of the Affiliation Agreement by and between Adventist Health System/Sunbelt, Inc. and Memorial Health Systems, Inc. As set forth in this Section and in the appropriate sections of the contracts identified in (i) and (ii) and the Affiliation Agreement, failure by either Adventist Health System/Sunbelt, Inc. or Memorial Health Systems, Inc. to execute the Affiliation Agreement on or before the Effective Date of this Agreement shall automatically (without the act of a party to this Agreement) terminate this Agreement.
- (h) Nonwaiver of Breach. The failure of a party hereto to enforce any of its rights arising by reason of any default or breach of covenant on the part of any other party shall not constitute a waiver thereof, nor shall any custom or practice between or among the parties in the course of administering this Agreement be construed to waive or to lessen their rights to insist upon the performance by the other party(ies) of any term, covenant or condition hereof, or to exercise any rights given it on the account of any such default. A waiver of a particular breach or default shall not be deemed to be a waiver of the same or any other subsequent breach or default.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the dates set forth below.

Two Witnesses:


Print Name: Barron J. Dwyer, Jr.

Print Name: Julie M. Ikeler

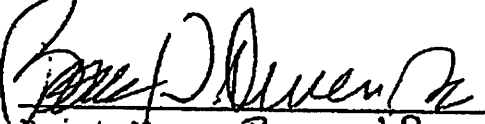
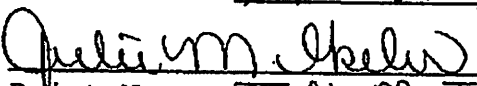
WEST VOLUSIA HOSPITAL AUTHORITY
a special taxing district,
public body corporate and
politic of the State of Florida

By: 
Name: Raymond Long
Title: Chairman

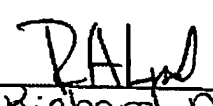
Date: September 29, 2000

[CORPORATE SEAL]

Two Witnesses:


Print Name: Barron J. Dwyer, Jr.

Print Name: Julie M. Ikeler

MEMORIAL HOSPITAL-WEST
VOLUSIA, INC., a Florida
not for profit corporation

By: 
Name: Richard A. Lind
Title: President

Date: September 29, 2000

[CORPORATE SEAL]

JOINDER BY MEMORIAL HEALTH SYSTEMS, INC.

Memorial Health Systems, Inc., as the sole member of Memorial Hospital-West Volusia, Inc., joins in the execution of this Agreement for the limited purpose of evidencing its agreement to (i) cause MH-WV to conduct its operations in a manner consistent with the provisions of this Agreement; and (ii) refrain from taking or omitting to take any action or causing MH-WV to take or omit to take any action which would be contrary to the covenants set forth in this Agreement. Memorial Health Systems, Inc. further agrees that any successor or transferee of the membership of MH-WV shall execute a signed writing agreeing to be bound by the terms of this Joinder which signed writing shall release Memorial Health Systems, Inc. from any further obligation under this Joinder as to acts/omissions occurring after the signed writing is presented to the Authority.

Two Witnesses:

By: [Signature]
Print Name: Raymond J. Owen, Jr.

MEMORIAL HEALTH SYSTEMS, INC., a
Florida not for profit corporation

BY: [Signature]
Print Name: Richard A. Lind

By: [Signature]
Print Name: Julie M. Ikeler

STATE OF FLORIDA

COUNTY OF Orange

The foregoing instrument was acknowledged before me this 29th day of September, 2000, by Raymond J. Owen, Jr. as Chairman of West Volusia Hospital Authority, on behalf of the Authority.



AFFIX NOTARY STAMP

[Signature]
Signature of Notary Public
Julie M. Ikeler

(Print Notary Name)

My Commission Expires: 8/16/2003

Commission No.: CC 863505

☒ Personally known, or

☐ Produced Identification

Type of Identification Produced

STATE OF FLORIDA
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 29th day of September, 2000, by Richard A. Lind, as President of Memorial Hospital-West Volusia, Inc., a Florida not for profit corporation, on behalf of the corporation.



AFFIX NOTARY STAMP

Julie M. Ikeler
Signature of Notary Public
Julie M. Ikeler
(Print Notary Name)

My Commission Expires: 8/16/2003
Commission No.: CC 863505

☒ Personally known, or
- Produced Identification
Type of Identification Produced

STATE OF FLORIDA
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 29th day of September, 2000, by Richard A. Lind, as President of Memorial Health Systems, Inc., on behalf of the not for profit corporation.



AFFIX NOTARY STAMP

Julie M. Ikeler
Signature of Notary Public
Julie M. Ikeler
(Print Notary Name)

Personally Known
My Commission Expires: 8/16/2003
Commission No.: CC 863505

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SCHEDULE 1

LEGAL DESCRIPTION

The Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 5, Township 17 South, Range 30 East, Volusia County, Florida, EXCEPTING therefrom the right-of-way of Stone Street, and the right-of-way for Plymouth Avenue.

The Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 5, Township 17 South, Range 30 East, Volusia County, Florida, EXCEPT the North 200.00 feet of the West 112.50 feet as measured along the North West lines and parallel with the North and West lines, and EXCEPT the right-of-way for Stone Street.

The West $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 5, Township 17 South, Range 30 East, Volusia County, Florida, EXCEPT the Westerly 60.00 feet thereof and EXCEPT the right-of-way for Plymouth Avenue.

Parcel No. 7005-00-00-0010

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RESTATED INDIGENT CARE REIMBURSEMENT AGREEMENT

THIS RESTATED INDIGENT CARE REIMBURSEMENT AGREEMENT (the "Agreement") restates and amends the Indigent Care Reimbursement Agreement entered into as of Midnight on September 30, 2000 ("Effective Date") by and between MEMORIAL HOSPITAL-WEST VOLUSIA, INC., a Florida not for profit corporation ("Memorial"), SOUTHWEST VOLUSIA HEALTHCARE CORPORATION d/b/a FLORIDA HOSPITAL FISH MEMORIAL, a Florida not for profit corporation ("Southwest Volusia"), and WEST VOLUSIA HOSPITAL AUTHORITY, a special taxing district, public body corporate and politic of the State of Florida in Volusia County, Florida (the "Authority").

1. **Background Information.** Memorial is a private not for profit corporation organized and existing under the laws of the State of Florida, and is the owner and operator of that certain hospital facility located in DeLand, Florida and heretofore known as West Volusia Memorial Hospital, which facility is to be renamed "Florida Hospital DeLand" effective October 1, 2000 (the "Hospital"). Southwest Volusia is the owner and operator of that certain healthcare facility located in Orange City, Florida, and known as Florida Hospital Fish Memorial ("Fish Memorial"). The Authority is a special taxing district created by Chapter 57-2085, Laws of Florida, for the purpose of providing financial support for medical care to indigent residents of the Authority's taxing district, all as provided in Chapter 57-2085, Laws of Florida, as amended.
2. **Agreement.** For and in consideration of the premises, the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree to the terms, provisions and conditions set forth in this Agreement. Southwest Volusia and Memorial shall, at Fish Memorial and the Hospital, respectively, provide inpatient and outpatient medical services to indigent persons who meet the criteria set forth in this Agreement ("Charity Care Patients"). The Authority shall be obligated to reimburse Southwest Volusia and/or Memorial (as the case may be) for those inpatient/outpatient services eligible for coverage under the State of Florida Medicaid Program, as amended from time to time, together with other usual and customary medical services offered to residents of Volusia County, Florida, as may be approved from time to time by the Authority (collectively "Covered Services") which are provided to Charity Care Patients residing within the Primary Service Area (as hereinafter defined) at the time of receipt of the Covered Service. The Authority, however,

will not be responsible for reimbursement for other charity care rendered, unless otherwise required by law.

3. **Charity Care Patient.** The term "Charity Care Patient" as used in this Agreement incorporates that population referred to as "indigent" in the enabling legislation of the Authority (Chapter 57-2085, Laws of Florida, as amended). Specifically, an individual will be considered a "Charity Care Patient" if:

- (a) The individual's family income for the eight (8) weeks preceding the determination falls below one hundred fifty percent (150%) of the current Federal Poverty Guidelines; or
- (b) The individual is in possession of a current photo ID and a current Volusia County Health Department Card (See, **Attachment A** attached hereto and incorporated herein by reference, which identifies documentation required to be provided by an individual seeking Charity Care Patient status); or
- (c) The individual's family income is less than one hundred fifty percent (150%) of the applicable Federal Poverty Guideline multiplied by three (3), and the medical charges incurred for Covered Services reduce the individual's annual family income below an amount which is equal to one hundred fifty percent (150%) of the Federal Poverty Guideline, then the amount of medical charges incurred after the individual's annual family income falls below the applicable Federal Poverty Guideline will be eligible for reimbursement under this Agreement. Reimbursement under this sub paragraph 3(c) shall be no greater than the amount of an individual's annual family income. The following is an example of the foregoing:

Patient A has documented annual family income of \$31,000. She is the single mother of a 2-year old son. Her hospital charges are \$17,500. The one hundred fifty percent (150%) Federal Poverty Guideline for her family size is \$16,875, and three (3) times this amount is \$50,625. Because her documented annual family income is less than three (3) times the one hundred fifty percent (150%) Federal Poverty Guideline, \$3,375 of her hospital charges are eligible for reimbursement.

Annual Family Income	\$31,000
Less: Hospital Charges	<u>17,500</u>

Adjusted Annual Family Income	13,500
150% Federal Poverty Guideline	<u>16,875</u>
Amount Eligible for Reimbursement	\$ 3,375

4. **Primary Service Area.** The "Primary Service Area" shall mean, for purposes of this Agreement, the West Volusia Taxing District.
5. **Reimbursement.** The Authority will provide reimbursement ("Reimbursement") for medical care provided to Charity Care Patients residing within the Primary Service Area in accordance with the following provisions.
 - 5.1 **Reimbursement Forms.** Southwest Volusia and Memorial will submit to the Authority invoices for charges for Covered Services rendered to Charity Care Patients in a form mutually acceptable to the Authority and Southwest Volusia or Memorial, or as otherwise may be required by law. Invoices shall include an itemized statement of Covered Services rendered in accordance with *Florida Statutes* Section 395.301, as amended. The itemized bill submitted by Southwest Volusia and Memorial shall comply with applicable law.
 - 5.2 **Reimbursement Rate.** Reimbursement is set at the following rates: (i) for inpatient care, one hundred five percent (105%) of the prevailing Medicare rates, and (ii) for outpatient care, one hundred twenty-five percent (125%) of prevailing Medicare rates. The parties agree to review these rates in the event legislation/regulations are adopted which materially affect the reimbursement methodology of the Medicare program, provided, however, neither party is required to meet more frequently than biennially to review the reimbursement methodology. In no event shall the annual aggregate Reimbursement provided to Southwest Volusia and Memorial by the Authority under this Agreement be required to exceed the Annual Payment Cap (as hereinafter defined).
 - 5.3 **Reimbursement Schedule.** Southwest Volusia and Memorial, as the case may be, shall submit to the Authority each invoice for Reimbursement no later than the month within which the day that is one hundred and eighty (180) days of the date on which the Covered Service was rendered (i.e., date of discharge, as to an inpatient and date of encounter as to an outpatient) to the Charity Care Patient falls. The Authority shall pay each completed and proper invoice submitted within

thirty (30) days after receipt of the invoice. Southwest Volusia and Memorial shall have thirty (30) days after receipt of notice from the Authority that an invoice is incomplete (such notice to identify with particularity the deficiency) to revise and resubmit the invoice. Southwest Volusia and Memorial agree that failure to submit an invoice no later than the month within which the day that is one hundred and eighty (180) days of the date of service falls may result in the disallowance of said invoice for the purposes of Reimbursement. The Authority shall establish an appropriate process whereby Reimbursement(s) will be remitted monthly, regardless of the meeting cycles of the Governing Board of the Authority.

5.4 Personal Liability - Charity Care Patient. Southwest Volusia and Memorial agree not to pursue collection from any Charity Care Patient for a Covered Service reimbursed by the Authority or for a Covered Service for which Reimbursement was sought and denied solely on the basis that the Annual Payment Cap has been met, provided, however, Southwest Volusia and Memorial shall have a right of recovery from any Charity Care Patient who receives payment and/or reimbursement from a third party for Covered Services. Southwest Volusia and Memorial shall continue to qualify and submit information for Reimbursement for Covered Services rendered to Charity Care Patients after the Annual Payment Cap is reached each year.

6. Annual Payment Cap. Reimbursement provided to Southwest Volusia and Memorial by the Authority during each of the first five (5) years of the term of this Agreement will be subject to an annual cap (the "Annual Payment Cap") of Four Million Dollars (\$4,000,000.00). Subject to the foregoing, commencing October 1, 2003, and continuing on October 1 thereafter, adjustments to the Annual Payment Cap shall be calculated annually based on the southeastern region of the Consumer Price Index ("CPI") as of June 30 of each year (e.g., CPI for June 30, 2003 shall be applied effective October 1, 2003). Commencing at the beginning of the sixth year of the term of this Agreement and continuing annually thereafter, the Annual Payment Cap shall be increased based on the annual calculations described above to include the cumulative CPI adjustments that commenced at the end of the third year. For purposes of this Agreement, adjustments to the Annual Payment Cap shall be calculated by multiplying the amount of the then current Annual Payment Cap by a fraction, the numerator of which shall be the CPI for the month preceding the date of adjustment, and the denominator

of which shall be the CPI for the month preceding the date that is twelve (12) months prior to the date of adjustment. Set forth in Attachment B is an example of the application of the CPI to the Annual Payment Cap. In the event the compilation and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculations. In the event the parties cannot agree on such alternative index, then the matter shall be submitted to mediation pursuant to Section 23 of this Agreement. The parties reserve the right to review in good faith the Annual Payment Cap in the event the indigent population increases above projections existing as of the date of this Agreement. In no event shall the Annual Payment Cap be less than Four Million Dollars (\$4,000,000). Reimbursement shall be subject to the Governing Board of the Authority (at the time the tax budget and tax millage are established for each tax year) appropriating annually sufficient sums to fund up to the Annual Payment Cap. Southwest Volusia and Memorial recognize that this Agreement does not convey on them a right to require the Authority to levy taxes.

7. **Prerequisites to Reimbursement.** The following provisions are conditions precedent to the Authority's obligation to provide Reimbursement to Southwest Volusia and Memorial.

7.1 **Warranties.** Southwest Volusia and Memorial are duly licensed, certified, and accredited by the appropriate governmental agencies to provide the care and services that are the subject of the Reimbursement request. Evidence of such licenses, certificates and accreditation shall be submitted to the Authority upon request.

7.2 **Performance.** There exists no legal or governmental action, or any other matter, that could materially affect the performance by Southwest Volusia or Memorial, as the case may be, under this Agreement, and Southwest Volusia or Memorial, as the case may be, shall promptly notify the Authority in writing of:

- (a) Any legal or governmental action initiated against Southwest Volusia or Memorial, as the case may be, which could materially affect the performance by Southwest Volusia or Memorial, as the case may be, under this Agreement; or
- (b) Any other problem or situation which could materially impair the ability of Southwest Volusia

or Memorial, as the case may be, to carry out their respective duties and obligations under this Agreement.

7.3 Compliance. Southwest Volusia and Memorial are in material compliance with all applicable laws, rules and regulations.

8. **Restricted Cash Account.** In addition to providing Reimbursement up to the Annual Payment Cap for a period of twenty (20) years following the effective date of this Agreement, the Authority shall establish, fund and maintain, in accordance with this Section 8, a restricted cash account as an endowment for indigent hospital care to be provided in the future at the Hospital and at Fish Memorial (the "Fund"). Contributions to the Fund shall be subject to the Governing Board of the Authority's annual appropriation (at the time the tax budget and tax millage are established for each tax year), and subject to other limitations imposed by Florida law. Subject to the annual appropriation for the Fund being adopted, the Authority shall provide in its annual budget for contributions to the Fund in the amount of Eight Hundred Thousand Dollars (\$800,000.00), or such lesser amount as is necessary such that at September 30 of each year the principal balance in the Fund is at least equal to the number of years then expired in the ten (10) year period described below multiplied by Eight Hundred Thousand Dollars (\$800,000.00) (the "Required Balance"). The Authority shall make such annual contributions for a period of ten (10) years ("Funding Period") so that, at the end of such Funding Period, the Fund shall have a principal balance of Eight Million Dollars (\$8,000,000.00). Any interest earned on the Fund balance shall belong to the Authority. The Authority shall also have the right to use revenues of the Fund, provided, however, the balance of the Fund (after revenues are used by the Authority) is not less than the Required Balance. The Required Balance in the Fund shall not be less than the number of years expired in the Funding Period multiplied by Eight Hundred Thousand Dollars (\$800,000.00). Therefore, if for any reason the Fund balance falls below the Required Balance, the Authority shall, as soon as reasonably possible, contribute to the Fund an amount necessary to bring the Fund balance to the Required Balance. Except as set forth in this Section (i.e., Fund revenues in excess of Required Balance), neither the Authority nor any other person or entity shall have the right to use the Fund for any purpose other than to fund indigent hospital care in the Primary Service Area, and the Fund shall only be used, and Reimbursements made therefrom, in the event the Authority fails to provide Reimbursement as otherwise

provided in this Agreement. In such event, the facility not receiving full Reimbursement ("Funding Deficiency"), subject always to the Annual Payment Cap, shall have the right to receive from the Fund, and the Authority acknowledges and agrees to this right, an amount equal to the Funding Deficiency. Southwest Volusia and Memorial recognize that this Agreement does not convey on them a right to require the Authority to levy taxes.

9. **Term.** This Agreement is effective as of Midnight, September 30, 2000 and shall expire on September 30, 2020. The initial fiscal year of this Agreement (for purposes of computing the Annual Payment Cap) shall begin when services to Charity Care Patients are first rendered by Southwest Volusia and/or Memorial and shall end on the following September 30. Thereafter, the fiscal year shall run from October 1 to September 30 (the tax year of the Authority). This Agreement may be terminated on the mutual agreement of the Authority, Memorial and Southwest Volusia.

Upon termination of this Agreement at the natural expiration of the Agreement (i.e., September 30, 2020), neither party shall have any further obligation to the other, and the balance of the Fund shall be released from the restrictions set forth in this Agreement.

Upon the termination of this Agreement prior to September 30, 2020, other than for breach of the Agreement by Southwest Volusia and/or Memorial, the balance in the Fund shall be remitted to Southwest Volusia and Memorial to be used to provide Reimbursement for hospital medical care for Charity Care Patients residing in the Primary Service Area until the balance of the Fund has been expended, and the Authority shall have no further obligation under this Agreement to either Southwest Volusia and/or Memorial, except as follows: (i) Reimbursement for Reimbursement forms submitted prior to the termination date, provided the Annual Payment Cap has not been reached; (ii) fund the appropriate pro rata amount due under Section 6 if the termination date occurs prior to September 30, 2020 (e.g., Agreement is terminated on January 1, 2004, the Authority will be obligated, subject to appropriation approval, to fund \$1,000,000 of the \$4,000,000 cap for fiscal year October 1, 2003 through September 30, 2004); and (iii) fund the appropriate pro rata amount due under Section 8 if the termination date occurs prior to September 30, 2010 (e.g., Agreement is terminated on January 1, 2004, the Authority will be obligated, subject to appropriation approval, to fund \$200,000 of the \$800,000 amount due).

10. **Effects of Termination.** Termination of this Agreement shall not affect the rights, obligations and liabilities of the parties arising out of transactions occurring prior to termination, unless otherwise specified herein, including the obligations of the Authority identified in Section 9. Upon termination of this Agreement, the parties agree to negotiate in good faith the establishment of a plan whereby medical needs of the indigent care population of Volusia County, Florida, can best be met in the future.
11. **Governing Law.** This Agreement shall be governed and construed according to the laws of the State of Florida.
12. **Venue.** The parties consent and agree that the sole venue for any proceeding concerning this Agreement or the matters contemplated hereby shall be Volusia County, Florida.
13. **Attorneys' Fees.** If a party commences litigation for the judicial interpretation or enforcement hereof, the prevailing party(ies) shall be entitled to a judgment against the non-prevailing party(ies) for an amount equal to reasonable attorneys' and paralegal fees, court costs, and other costs incurred, whether at trial, on appeal or in bankruptcy.
14. **Captions.** The captions or titles of the sections herein have been included for convenience only and shall not be considered as part of this Agreement.
15. **Counterparts.** This Agreement may be signed in counterparts, each of which shall be deemed an original.
16. **Force Majeure.** If any party hereto is delayed or hindered in, or prevented from, the performance of any obligation hereunder by reason of fire, strikes, lock-outs, severe weather, rain, earthquakes, other acts of God, labor troubles or shortages, inability to procure materials, failure of power, riots, insurrection, war or other reasons of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement (all of such reasons or causes referred to in this Agreement as "Force Majeure"), then performance of such acts shall be excused for the period of the delay, and the period of the performance of any such act shall be extended for a period equivalent to the period of such delay.
17. **Nonwaiver of Breach.** The failure of a party hereto to enforce any of its rights arising by reason of any default or breach of covenant on the part of the other party(ies)

shall not constitute a waiver thereof, nor shall any custom or practice between or among the parties in the course of administering this Agreement be construed to waive or to lessen their rights to insist upon the performance by the other party(ies) of any term, covenant or condition hereof, or to exercise any rights given it on the account of any such default. A waiver of a particular breach or default shall not be deemed to be a waiver of the same or any other subsequent breach or default.

18. **Other Documents and Acts.** A party shall, at the request of the other parties, execute, acknowledge and deliver whatever additional instruments and do such other acts as may be required or convenient in order to accomplish and carry forward the intent and purposes of this Agreement.
19. **Nonassignability.** This Agreement may not be assigned, delegated or transferred by Memorial or Southwest Volusia without the express written consent of the Authority; provided, however, notwithstanding the foregoing, this

Agreement may be assigned by either Memorial or Southwest Volusia to an affiliate or parent of Memorial or Fish Memorial.
20. **Successors.** All of the covenants, agreements, conditions and undertakings contained in this Agreement shall extend and inure to and be binding upon the successors and permitted assigns of the respective parties hereto, and whenever in this Agreement reference is made to any of the parties hereto, it shall include and apply, wherever applicable, to the successors and permitted assigns of such party. Except as expressly stated herein, nothing herein shall be construed to grant to or confer upon any person, entity, or governmental authority, other than the parties hereto and their successors and permitted assigns, any right or claim by virtue of any provision of this Agreement.
21. **Notices.** All notices, claims or demands required or permitted to be given hereunder shall be in writing and may be delivered personally, transmitted by telecopier, or by a nationally recognized overnight courier or mailed to the other party, properly addressed, certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

If to Authority: West Volusia Hospital Authority
131 East New York Avenue, 3rd Floor
DeLand, FL 32724
Attention: Chairman
Board of Commissioners
Facsimile: (904) 943-7590
Copy to: William E. Sherman, Esquire

If to Memorial: Memorial Hospital-West Volusia, Inc.
111 North Orlando Avenue
Winter Park, Florida 32789
Attention: Sandra Johnson
Vice President Business Development
T.L. Trimble, Esq.
Vice President Legal Services
Facsimile: (407) 975-1414

If to Fish Memorial: Southwest Volusia Healthcare
Corporation, d/b/a
Florida Hospital Fish Memorial
1055 Saxon Boulevard
Orange City, Florida 32763
Attention: Chief Financial Officer
Facsimile: (904) 851-5019

If to Hospital: Florida Hospital DeLand
701 W. Plymouth Ave.
DeLand, Florida 32724
Attn: Chief Executive Officer

Any party may change the address for notices to be sent to it by written notice actually delivered to the other parties. A notice that is mailed shall be deemed effective on the day after the date of postmark, if mailed in accordance with this subsection. Other forms of notice shall be deemed effective when received by the intended recipient.

22. **Dispute Resolution.** In the event that the parties to this Agreement cannot settle a dispute arising as a result of or in connection with the terms this Agreement, the disputed matter must be submitted to mediation in accordance with the provisions of Section 23.
23. **Mediation.** All disputes, claims, demands or causes of action arising from or relating to this Agreement, or any of the documents incorporated by reference herein, shall be resolved through litigation in a state court of competent jurisdiction in Volusia County, Florida. Prior to filing

suit, the party desiring to initiate litigation shall serve the other parties with a request for mediation by certified mail, return receipt requested. The mediation shall be conducted within sixty (60) days of service of the request for mediation, which service shall be effective upon mailing by the requesting party. The mediation shall be conducted by a mediator mutually acceptable to the parties. In the event that the disputes, claims, demands or causes of action are not resolved by mediation, or the mediation is not conducted within the time and manner prescribed herein, the initiating party may, thereafter, file suit. The initiating party may file suit prior to mediation if the party reasonably believes that such filing is required in order to commence litigation within an applicable statute of limitations. A request for mediation shall be served with the complaint as part of the service of process for the lawsuit. In such event, the parties shall conduct no discovery in the litigation pending compliance with the mediation provisions hereunder. The mediation shall be conducted within sixty (60) days of service of the request for mediation, which shall be effective upon service of the Complaint along with a request for mediation as part of service of process. The mediation shall be conducted by a court-appointed mediator. In the event that the disputes, claims, demands or causes of action are not resolved by mediation, or the mediation is not conducted within the time and manner prescribed herein, the parties may, thereafter, commence discovery in the lawsuit. All mediation shall take place in Volusia County, Florida, unless otherwise mutually agreed upon by the parties in writing.

24. **Time of Essence.** Time is hereby expressly declared to be of the essence to this Agreement.
25. **Special Provisions.** Southwest Volusia and Memorial are and shall remain qualified under Section 501(c)(3) of the United States Internal Revenue Code.
26. **Amendments and Modifications.** This Agreement may not be amended or modified except by an executed writing by the parties hereto.
27. **Severability.** If any clause or provision of this Agreement is or becomes illegal, invalid, or unenforceable under any present or future law, the parties agree that the remaining provisions of this Agreement shall not be affected thereby and shall continue in full force and effect.
28. **Entire Agreement.** Except as set forth in Section 29, this Agreement, including the exhibits hereto, contains the

entire agreement of the parties with respect to the matters set forth herein and supersedes all prior negotiations and agreements, whether oral or written, concerning the subject matter hereof, all of which are merged in this Agreement.

29. **Structure of Transaction.** This Agreement together with (i) the Agreement ("Florida Hospital DeLand"), and (ii) the Termination of Lease, Settlement and Asset Transfer Agreement entered into between one or more parties to this Agreement is conditioned on the execution of the Affiliation Agreement by and between Adventist Health System/Sunbelt, Inc. and Memorial Health Systems, Inc. As set forth in this Section and in the appropriate sections of the contracts identified in (i) and (ii) and the Affiliation Agreement, failure by either Adventist Health System/Sunbelt, Inc. or Memorial Health Systems, Inc. to consummate the transactions evidenced in the Affiliation Agreement shall automatically (without the act of a party to this Agreement) terminate this Agreement.

IN WITNESS WHEREOF, Memorial Hospital-West Volusia, Inc., Southwest Volusia Healthcare Corporation and West Volusia Hospital Authority have executed this Restated Indigent Care Reimbursement Agreement as of the 16th day of May, 2002.

Two Witnesses:

[Signature]
Print Name

Neil Brodsky
Print Name

**WEST VOLUSIA HOSPITAL
AUTHORITY**, a special taxing
district, public body
corporate and politic of the
State of Florida

By: [Signature]
Name: Jim NEELY
Title: CHAIRPERSON

[CORPORATE SEAL]

ATTEST:
By: [Signature]
Name: Candace Lankford
Title: Secretary

STATE OF FLORIDA
COUNTY OF Volusia

The foregoing instrument was acknowledged before me this 16th day of May, 2002, by Jim Neely, as Chairman of West Volusia Hospital Authority, on behalf of the Authority.

AFFIX NOTARY STAMP

[Signature]
Signature of Notary Public
Joanne H. Rowe
(Print Notary Name)
My Commission Expires: 6/29/2004
Commission No.: CC 940320
☒ Personally known, or
☐ ~ Produced Identification
Type of Identification
Produced



Joanne Hall Rowe
Commission # CC 940320
Expires June 29, 2004
Bonded Thru
Atlantic Bonding Co., Inc.

Two Witnesses:

Alice C. Reid
ALICE C. REID
Print Name

Roger Landry
ROGER LANDRY
Print Name

STATE OF FLORIDA

COUNTY OF Volusia

The foregoing instrument was acknowledged before me this 16th day of May, 2002, by Lawrence E. Schalk, Senior VP/CFO, as of Southwest Volusia Healthcare Corporation d/b/a Florida Hospital Fish Memorial, a Florida not for profit corporation, on behalf of the corporation.

AFFIX NOTARY STAMP



Joanne Hall Rowe
Commission # CC 940320
Expires June 29, 2004
Bonded Thru
Atlantic Bonding Co., Inc.

SOUTHWEST VOLUSIA HEALTHCARE
CORPORATION d/b/a FLORIDA
HOSPITAL FISH MEMORIAL a
Florida not for profit
corporation

By: Lawrence E. Schalk
Name: LAWRENCE E. SCHALK
Title: SENIOR VP/CFO

[CORPORATE SEAL]

Joanne Hall Rowe
Signature of Notary Public

Joanne Hall Rowe
(Print Notary Name)

My Commission Expires: 6/29/04

Commission No.: CC 940320

☒ Personally known, or

☐ Produced Identification

Type of Identification

Produced

Two Witnesses:

Alice C. Reid
ALICE C. REID
Print Name

Roger Landry
ROGER LANDRY
Print Name

MEMORIAL HOSPITAL-WEST

VOLUSIA, INC., a Florida not
for profit corporation

By: Lawrence E. Schalk
Name: LAWRENCE E. SCHALK
Title: SENIOR VP/CFO

[CORPORATE SEAL]

STATE OF FLORIDA
COUNTY OF Volusia

The foregoing instrument was acknowledged before me this ____ day
of _____, 2002, by Lawrence E. Schalk Senior VP/CEO, as
_____ of Memorial Hospital West Volusia,
Inc. a Florida not for profit corporation, on behalf of the
corporation.



Joanne Hall Rowe
Signature of Notary Public

Joanne Hall Rowe
(Print Notary Name)

My Commission Expires: 6/29/04

Commission No.: CC 940320

✓ Personally known, or

~ Produced Identification

Type of Identification

Produced

AFFIX NOTARY STAMP



Joanne Hall Rowe
Commission # CC 940320
Expires June 29, 2004
Bonded Through
Atlantic Bonding Co., Inc.

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ATTACHMENT A

The following documentation is required to validate an individual's qualifications as a Charity Care Patient as that term is defined in the Agreement.

Employed Individuals: Income will be documented by one or more of the following items:

- W-2
- Previous Year Tax Return
- Current pay Stub
- Letter verifying earnings from employer
- Current Volusia County Health Department Card
- Dependent Children enrolled in Medicaid Program

Other Individuals: Income will be documented by one or more of the following items:

Self-employed:

- Previous Year Tax Return
- Two Months of bank statements used to determine 150% Federal Poverty Guideline Income
- Dependent children enrolled in Medicaid Program
- Current Volusia County Health Department Card
- Income Certification - Used only if none of the above items are available

Unemployed:

- Current Volusia County Health Department Card
- Income Certification - Used only if the above item is unavailable

Homeless:

- Current Volusia County Health Department Card
- Income Certification - Used only if the above item is unavailable

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ATTACHMENT B

The applicable index (the "CPI") is the Consumer Price Index for Urban Wage Earners And Clerical Workers, U.S. City Average, All Items (1982-84+100), issued by the Bureau of Labor Statistics of the United States Department of Labor. For purposes of applying the price index, the following definitions shall apply: The "base index" is the price index for the month of June in the year of adjustment; the "comparison index" is the price index for the month of June that is twelve (12) months prior to the date of adjustment; the "percentage of increase" is the comparison index less the base index, divided by the base index, and multiplied by 100. Thus:

$$\frac{\text{Comparison index} - \text{base index}}{\text{Base index}} \times 100 = \text{percentage of increase}$$

Accordingly, application of the price index in order to calculate the adjustment to the Annual Payment Cap shall be made by increasing or decreasing, as the case may be, the Annual Payment Cap (provided that the Annual Cap can never be less than \$4,000,000) by an amount equal to the product of the percentage of increase times the then current Annual Payment Cap.

The following is an example of how the Annual Payment Cap will be calculated:

Year	Base Indigent Cap	Percentage of Increase of 6/30	Adjusted Indigent Cap*
1 00-01	\$4,000,000	2.00%	\$4,000,000
2 01-02	4,000,000	2.00%	4,000,000
3 02-03	4,000,000	2.00%	4,000,000
4 03-04	4,000,000	2.00%	4,000,000
5 04-05	4,000,000	2.00%	4,000,000
6 05-06	4,000,000 x 6%	2.00%	4,244,832 x 3.5%
7 06-07	4,240,000	3.50%	4,393,401
8 07-08	4,388,400	4.50%	4,591,104
9 08-09	4,585,878	-1.50%	4,522,238
10 09-10	4,517,090	-5.00%	4,296,126

*Adjusted Indigent Cap not to be reduced below \$4,000,000

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AMENDMENT TO INDIGENT CARE REIMBURSEMENT AGREEMENT

This AMENDMENT, dated as of July ²⁷~~31~~, 2003, amends the INDIGENT CARE REIMBURSEMENT AGREEMENT (the "Agreement") dated as of Midnight on September 30, 2000 ("Effective Date") by and between MEMORIAL HOSPITAL-WEST VOLUSIA, INC., a Florida not for profit corporation ("Memorial"), SOUTHWEST VOLUSIA HEALTHCARE CORPORATION d/b/a FLORIDA HOSPITAL FISH MEMORIAL, a Florida not for profit corporation ("Southwest Volusia"), and WEST VOLUSIA HOSPITAL AUTHORITY, a special taxing district, public body corporate and politic of the State of Florida in Volusia County, Florida (the "Authority"), hereafter "Amendment".

In order to provide for greater flexibility in meeting the needs of the medically indigent population, the parties hereto find that it is in their best interests and the best interests of the public to enter into this Amendment.

Now, therefore, for and in consideration of the premises, covenants and agreements set forth herein, the parties hereto agree that the Agreement is amended in the following sections and manner as follows:

1. Paragraph 8 "Restricted Cash Account" of the Agreement is deleted and amended in its entirety to provide:

"8. **Restricted Cash Account.** In addition to providing Reimbursement up to the Annual Payment Cap for a period of twenty (20) years following the effective date of this Agreement, the Authority, for a period of Seven (7) years, commencing with the 2003-2004 Authority fiscal year through the 2009-2010 Authority fiscal year ("Funding Period"), shall:

- (a) maintain, in accordance with this Section 8, a restricted cash account as an additional fund for qualified Charity Care Patient services to be provided at the Hospital and at Fish Memorial (the "Fund"). The initial Fund balance shall be Two Million Four Hundred Thousand Dollars (\$2,400,000.00), less any amount allocated by the Authority upon the request of Fish Memorial and the Hospital for qualified Charity Care Patient Reimbursement under this Agreement for the 2002-2003 Authority fiscal year. ("Initial Balance"). During

the period that this section 8 of the Agreement is in effect the Authority may, at the written request of the Hospital and Fish Memorial, in the Authority's sole discretion, allocate all or a portion of the Fund to provide additional Charity Care Patient service Reimbursement pursuant to this Agreement. Such allocation will reduce the amount of the Fund by the amount allocated to Charity Care Patient Reimbursement. Interest earned on the Fund balance shall belong to the Authority. The Authority shall also have the right to use revenues of the Fund, provided, however, that the balance of the Fund is not less than the Initial Balance less allocations made for Charity Care Patient Reimbursement pursuant to this sub-section 8(a) . Once the Fund is exhausted this provision of the Agreement is terminated. If the Fund is not exhausted at the end of the Funding Period for this Section 8 of the Agreement, any remaining balance in the Fund, will revert to the Authority's sole control, free of the provisions of this Agreement.

- (b) subject to annual appropriation, provide annually in its budget (at the time of the tax budget and tax millage are established for each fiscal year) for an amount of Eight Hundred Thousand Dollars (\$800,000.00) for the purpose of providing additional Charity Care Patient Reimbursement to the Hospital and Fish Memorial under the terms of this Agreement ("Additional Charity Care Patient Reimbursement Amount"). The Additional Charity Care Patient Reimbursement Amount will be available, at the Authority's sole discretion, for Charity Care Reimbursement to the Hospital and Fish Memorial under the terms of this Agreement if the Hospital and Fish Memorial exceed, or projections show that they will exceed, their Annual Payment Cap amount for Charity Care Reimbursement under Paragraph Six (6) of the Agreement. During the then current Authority fiscal year, the Additional Charity Care Patient Reimbursement Amount may only be expended for the purposes of this Agreement unless the Authority receives the written approval of the Hospital and Fish Memorial allowing for alternate expenditures for the Additional Charity Care Patient Reimbursement Amount. If the Additional Charity Care

Patient Reimbursement Amount is not exhausted at the end of the then current Authority fiscal year, any remaining balance will revert to the Authority's sole control, free of the provisions of this Agreement.

All funds allocated to Charity Care Patient Reimbursement under this Section 8 shall be in addition to the Annual Payment Cap allocation under Section 6 of this Agreement, and such allocations shall not be used in the formula for calculating subsequent years' Annual Payment Cap amounts. The Authority's Reimbursement obligations under this Agreement are subject to the Governing Board of the Authority's annual appropriation (at the time the tax budget and tax millage are established for each fiscal year), and subject to other limitations imposed by Florida law. Southwest Volusia and Memorial recognize that this Agreement does not convey on them a right to require the Authority to levy taxes."

2. Paragraph 9 "Term" of the Agreement, line one of the third paragraph shall be amended as follows:

"9. Term.

....

Upon the termination of this Agreement prior to September 30, 2020
2010 . . ."

The remainder of Paragraph 9, shall remain unamended and in full force and effect.

3. Paragraph 21 "Notices" of the Agreement, regarding notices to the Authority "If to the Authority:" shall be deleted and replaced with:

"West Volusia Hospital Authority
844 W. Plymouth Ave.
DeLand, FL 32720
Attention: Chairman
Board of Commissioners
Facsimile: (386) 943-7590
Copy to: William E. Sherman, Esquire"

The remainder of Paragraph 21, shall remain unamended and in full force and effect.

4. All other provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to the Agreement as of the day and date set forth above.

Two Witnesses:

Roger Landry
ROGER LANDRY
 Print Name

Alice C. Reid
ALICE C. REID
 Print Name

WEST VOLUSIA HOSPITAL AUTHORITY,
 a special taxing district, public body corporate and
 politic of the State of Florida

By: Richard L. Rhodes
 Name: Richard L. Rhodes
 Title: Chairman

(CORPORATE SEAL)

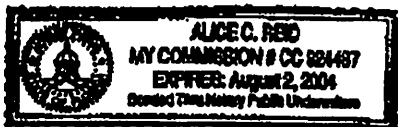
ATTEST:

By: Joanna H. Rowe
 Name: Assistant Secretary
 Title: Joanna H. Rowe

STATE OF FLORIDA
 COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 31st day of July, 2003, by Richard L. Rhodes and Joanna H. Rowe, as Chairman and Assistant Secretary of the West Volusia Hospital Authority, on behalf of the Authority.

AFFIX NOTARY STAMP



Alice C. Reid
 Signature of Notary Public
ALICE C. REID
 (Print Notary Name)
 My Commission Expires: August 2, 2004
 Commission No.: CC 924487
☒ Personally known, or
☐ Produced Identification
 Type of Identification Produced

PRIMARY CARE PHYSICIANS INDIGENT HOSPITAL PATIENT PROGRAM REIMBURSEMENT AGREEMENT

This **PRIMARY CARE PHYSICIANS INDIGENT HOSPITAL PATIENT PROGRAM REIMBURSEMENT AGREEMENT** (the "Agreement") is entered into by and between MEMORIAL HOSPITAL-WEST VOLUSIA, INC. d/b/a FLORIDA HOSPITAL DELAND, a Florida not for profit corporation ("FHD"), SOUTHWEST VOLUSIA HEALTHCARE CORPORATION d/b/a FLORIDA HOSPITAL FISH MEMORIAL, a Florida not for profit corporation ("Southwest Volusia"), collectively referred to as "Florida Hospital," and WEST VOLUSIA HOSPITAL AUTHORITY, a special taxing district, public body corporate and politic of the State of Florida in Volusia County, Florida (the "Authority"), effective October 1, 2005 (the "Effective Date").

The Authority is an independent special tax district encompassing the western portion of Volusia County, Florida (the "Tax District"), created by a special act of the Florida Legislature, Chapter 57-2085, Laws of Florida, as amended (the "Enabling Legislation"), for the purpose of, either directly or through third parties, providing access to healthcare for indigent residents of the Tax District.

FHD is the owner and operator of the hospital facility located in DeLand, Florida, and Southwest Volusia is the owner and operator of that certain healthcare facility located in Orange City, Florida, collectively the "WV Hospitals". The WV Hospitals serve the residents, including qualified indigent residents, of the Tax District.

The Enabling Legislation authorizes and empowers the Authority to enter into lawful contracts that its Board of Commissioners may deem proper or expedient to carry out its purposes.

The Authority's Board of Commissioners has determined that this Agreement is authorized by the Enabling Legislation and is necessary for the preservation of the public health, for the public good, and for the use of the public within the Tax District.

Under the terms of this Agreement Florida Hospital will provide for needed services for qualified residents of the Tax District as described in Paragraph 2, "Program", hereof, for which the Authority will reimburse Florida Hospital.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. **Reimbursement Period.** This Agreement shall provide Reimbursement for the Program for the period from the 1st day of October, 2005 through the 30th day of September, 2006.

2. **Program.** Florida Hospital shall, at the WV Hospitals, provide for general primary care inpatient and Emergency Department services (reimbursable under ICRA as hereafter defined) of responsible physician's services [other than specialty care physician services covered under Section 3 of Addendum I of the INTERLOCAL AGREEMENT -- WVHA-VCHD 2005-2006 between the Volusia County Health Department and the Authority, (the "Interlocal Agreement")], a copy of which is attached, ("Physician Services"), to Charity Care Patients who meet the criteria set forth in this Agreement. The Authority shall reimburse Florida Hospital for Inpatient and Emergency Department Physician Services pursuant to the terms of this Agreement which are provided to Charity Care Patients residing within the Primary Service Area (as hereinafter defined) at the time of receipt of the Qualified Physician Services, as defined below, up to the Annual Payment Cap.

2.1 Florida Hospital will contract with properly licensed and qualified physicians for Physician Services rendered pursuant to this Agreement.

2.2 Florida Hospital will provide the Volusia County Health Department ("VCHD") with a regularly updated list of the Florida Hospital medical staff as an aid to the VCHD in providing pharmacy services under the Interlocal Agreement.

3. **Charity Care Patient.** An individual will be considered a "Charity Care Patient" if the individual is qualified pursuant to the INDIGENT CARE REIMBURSEMENT AGREEMENT dated as of Midnight on September 30, 2000, by and between Southwest Volusia, FHD, and the Authority, as amended, a copy of which is attached, (hereafter "ICRA"), which is incorporated hereto by reference.

4. **Primary Service Area.** The "Primary Service Area" shall mean, for purposes of this Agreement, the Tax District.

5. **Reimbursement.** The Authority will provide reimbursement ("Reimbursement") for Physician Services provided to qualified Charity Care Patients residing within the Primary Service Area ("Qualified Physician Services") in accordance with the following provisions:

5.1 **Reimbursement Forms.** Southwest Volusia and FHD will monthly submit to the Authority invoices for charges for Qualified Physician Services in a form mutually acceptable to the Authority and Southwest Volusia or FHD, or as otherwise may be required by law.

- 5.2 **Reimbursement Rate.** Florida Hospital shall be reimbursed for Qualified Physician Services at the following rates: (i) for inpatient care, a flat fee of \$315.79 per admission, (ii) for Emergency Department care, a flat fee of \$ 68.42 per patient visit. The parties agree to review these rates in the event legislation or regulations are adopted which materially affect the Medicare Physician Fee

Schedule. In no event shall the annual aggregate Reimbursement provided to Florida Hospital by the Authority under this Agreement be required to exceed the Annual Payment Cap (as hereinafter defined).

5.3 Reimbursement Schedule. Payments will be made in accordance with Section 5.3 of the ICRA. Florida Hospital may, at its sole option, immediately terminate this Agreement for non-payment by the Authority. The Authority may, at its sole option, immediately terminate this Agreement for failure to provide Qualified Physician Services by Florida Hospital.

- 5.4 Personal Liability - Charity Care Patient. Florida Hospital agrees, for Florida Hospital, and on behalf of Physicians providing Qualified Physician Services pursuant to this Agreement, not to charge, or to pursue collection from, any Charity Care Patient for such service reimbursed by the Authority, provided, however, Florida Hospital pursuant to this Agreement shall have a right of recovery from any Charity Care Patient to the extent the Charity Care Patient is entitled to payment and/or reimbursement from a third party for Qualified Physician Services; any patient receiving payment and/or reimbursement from a third party for otherwise Qualified Physician Services will be considered disqualified for Authority reimbursement under this Agreement for those services that are paid or reimbursed by a third party for that patient ("Physician Services"), and the Authority will be reimbursed by Florida Hospital for payments made to Florida Hospital by the Authority for that patient's Physician Services under this Agreement.
6. **Annual Payment Cap.** Reimbursement provided to Florida Hospital by the Authority during the Reimbursement Period for Qualified Physician Services pursuant to this Agreement will be subject to a cap (the "Annual Payment Cap") of \$ 325,000.00. Florida Hospital recognizes that this Agreement does not convey on them a right to require the Authority to levy taxes.
7. **Prerequisites to Reimbursement.** The following provisions are conditions precedent to the Authority's obligation to provide Reimbursement to Southwest Volusia and FHD.
- 7.1 Warranties. Southwest Volusia and FHD are duly licensed, certified as applicable, and accredited by the appropriate agencies to provide the care and services that are the subject of the Reimbursement request. Evidence of such licenses, certificates and accreditation shall be submitted to the Authority upon request.
- 7.2 Performance. There exists no legal or governmental action, or any other matter, that could materially affect the performance by Southwest Volusia or FHD, as the case may be, under this Agreement, and Southwest Volusia or FHD, as the case may be, shall promptly notify the Authority in writing of:

- (a) Any legal or governmental action initiated against Southwest Volusia or FHD, as the case may be, which could materially affect the performance by Southwest Volusia or FHD, as the case may be, under this Agreement; or
 - (b) Any other problem or situation which could materially impair the ability of Southwest Volusia or FHD, as the case may be, to carry out their respective duties and obligations under this Agreement.
- 8. **Governing Law.** This Agreement shall be governed and construed according to the laws of the State of Florida.
- 9. **Venue.** The parties consent and agree that the sole venue for any proceeding concerning this Agreement or the matters contemplated hereby shall be Volusia County, Florida.
- 10. **Attorneys' Fees.** If a party commences litigation for the judicial interpretation or enforcement hereof, the prevailing party(ies) shall be entitled to a judgment against the non-prevailing party(ies) for an amount equal to reasonable attorneys' and paralegal fees, court costs, and other costs incurred, whether at trial, on appeal or in bankruptcy, in addition to any other relief to which such party(ies) may be entitled.
- 11. **Captions.** The captions or titles of the sections herein have been included for convenience only and shall not be considered as part of this Agreement.
- 12. **Counterparts.** This Agreement may be signed in counterparts, each of which shall be deemed an original.
- 13. **Force Majeure.** If any party hereto is delayed or hindered in, or prevented from, the performance of any obligation hereunder by reason of fire, strikes, lock-outs, severe weather, rain, earthquakes, other acts of God, labor troubles or shortages, inability to procure materials, failure of power, riots, insurrection, war or other reasons of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement (all of such reasons or causes referred to in this Agreement as "Force Majeure"), then performance of such obligations shall be excused for the period of the delay, and the period of the performance of any such obligation shall be extended for a period equivalent to the period of such delay.
- 14. **Nonwaiver of Breach.** The failure of a party hereto to enforce any of its rights arising by reason of any default or breach of covenant on the part of the other party(ies) shall not constitute a waiver thereof, nor shall any custom or practice between or among the parties in the course of administering this Agreement be construed to waive or to lessen their rights to insist upon the performance by the other party(ies) of any term, covenant or condition hereof, or to exercise any rights given it on the account of any such default. A

waiver of a particular breach or default shall not be deemed to be a waiver of the same or any other subsequent breach or default.

15. **Other Documents and Acts.** A party shall, at the request of the other parties, execute, acknowledge and deliver whatever additional instruments and do such other acts as may be required or convenient in order to accomplish and carry forward the intent and purposes of this Agreement.
16. **Nonassignability.** This Agreement may not be assigned, delegated or transferred by FHD or Southwest Volusia without the express written consent of the Authority.
17. **Successors.** All of the covenants, agreements, conditions and undertakings contained in this Agreement shall extend and inure to and be binding upon the successors and permitted assigns of the respective parties hereto, and whenever in this Agreement reference is made to any of the parties hereto, it shall include and apply, wherever applicable, to the successors and permitted assigns of such party. Except as expressly stated herein, nothing herein shall be construed to grant to or confer upon any person, entity, or governmental authority, other than the parties hereto and their successors and permitted assigns, any right or claim by virtue of any provision of this Agreement.
18. **Notices.** All notices, claims or demands required or permitted to be given hereunder shall be in writing and may be delivered personally, transmitted by telecopier, or by a nationally recognized overnight courier or mailed to the other party, properly addressed, certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

If to Authority: West Volusia Hospital Authority
844 West Plymouth Avenue
DeLand, FL 32720
Attention: Chairman
Board of Commissioners
Facsimile: (386) 943-7590
Copy to: William E. Sherman, Esquire

If to FHD: Memorial Hospital-West Volusia, Inc.
d/b/a Florida Hospital-DeLand
701 W. Plymouth Avenue
DeLand, Florida 32720
Attention: Chief Executive Officer

If to Southwest Volusia: Southwest Volusia Healthcare
Corporation, d/b/a
Florida Hospital Fish Memorial
1055 Saxon Boulevard

Orange City, Florida 32763
Attention: Chief Financial Officer
Facsimile: (386) 851-5019

Any party may change the address for notices to be sent to it by written notice actually delivered to the other parties. A notice that is mailed shall be deemed effective on the day after the date of postmark, if mailed in accordance with this subsection. Other forms of notice shall be deemed effective when received by the intended recipient.

19. **Dispute Resolution.** In the event that the parties to this Agreement cannot settle a dispute arising as a result of or in connection with the terms of this Agreement, the disputed matter must be submitted to mediation in accordance with the provisions of Section 20 of this Agreement.
20. **Mediation.** All disputes, claims, demands or causes of action arising from or relating to this Agreement, may be resolved through litigation in a state court of competent jurisdiction in Volusia County, Florida. Prior to filing suit, the party desiring to initiate litigation shall serve the other parties with a request for mediation by certified mail, return receipt requested. The mediation shall be completed within sixty (60) days of service of the request for mediation, which service shall be effective upon mailing by the requesting party. The mediation shall be conducted by a mediator mutually acceptable to the parties. In the event that the disputes, claims, demands or causes of action are not resolved by mediation, or the mediation is not completed within the sixty (60) day period, the initiating party may, thereafter, file suit. However, the initiating party may file suit prior to mediation if the party reasonably believes that such filing is required in order to commence litigation within an applicable statute of limitations. In which case, a request for mediation shall be served with the Complaint as part of the service of process for the lawsuit. In such event, the parties shall conduct no discovery in the litigation pending compliance with the mediation provisions hereunder. The mediation shall be completed within sixty (60) days of service of the request for mediation, which shall be effective upon service of the Complaint along with a request for mediation as part of service of process. The mediation shall be conducted by a court-appointed mediator. In the event that the disputes, claims, demands or causes of action are not resolved by mediation, or the mediation is not completed within the sixty (60) day period, the parties may, thereafter, commence discovery in the lawsuit. All mediation shall take place in Volusia County, Florida, unless otherwise mutually agreed upon by the parties in writing.
21. **Time of Essence.** Time is hereby expressly declared to be of the essence to this Agreement.
22. **Amendments and Modifications.** This Agreement may not be amended or modified except by an executed writing by the parties hereto.
23. **Severability.** If any clause or provision of this Agreement is or becomes illegal, invalid, or unenforceable under any present or future law, the parties agree that the remaining

provisions of this Agreement shall not be affected thereby and shall continue in full force and effect.

24. **Entire Agreement.** This Agreement, including any exhibits attached hereto, all of which are merged in this Agreement, contains the entire agreement of the parties with respect to the matters set forth herein and supersedes all prior negotiations and agreements, whether oral or written, concerning the subject matter hereof.

IN WITNESS THEREOF, the parties have executed this Agreement effective as of the day and year first written above.

Two Witnesses:

WEST VOLUSIA HOSPITAL AUTHORITY,
a special taxing district, public body corporate and
politic of the State of Florida

Print Name

By:
Name: Walt Mentzer
Title: Chairman

(Corporate Seal)

Print Name

ATTEST:

By:
Name: Richard Rhodes
Title: Secretary

Two Witnesses:

**SOUTHWEST VOLUSIA HEALTH CARE
CORPORATION d/b/a FLORIDA HOSPITAL
FISH MEMORIAL** a Florida not for profit corporation

Print Name

By:
Name:
Title:

(Corporate Seal)

Print Name

ATTEST:
By:
Name:
Title: Secretary

Two Witnesses:

**MEMORIAL HOSPITAL-WEST VOLUSIA, INC.
d/b/a FLORIDA HOSPITAL - DELAND,**
a Florida not for profit corporation

Print Name

By:
Name:
Title:

(Corporate Seal)

Print Name

ATTEST:

By:
Name:
Title: Secretary

FOURTEENTH ADDENDUM

This Fourteenth Addendum is entered into by and between MEMORIAL HOSPITAL-WEST VOLUSIA, INC. d/b/a ADVENTHEALTH DELAND, a Florida not for profit corporation ("FHD"), SOUTHWEST VOLUSIA HEALTHCARE CORPORATION d/b/a ADVENTHEALTH FISH MEMORIAL, a Florida not for profit corporation ("Southwest Volusia"), and WEST VOLUSIA HOSPITAL AUTHORITY, a special taxing district, public body corporate and politic of the State of Florida in Volusia County, Florida (the "Authority"), effective October 1, 2019.

Whereas, FHD, Southwest Volusia and the Authority entered into the Primary Care Physicians Indigent Hospital Patient Program Reimbursement Agreement in October of 2005, for reimbursement to FHD and Southwest Volusia for Physician Services rendered to Charity Care Patients through September 30, 2006 ("Reimbursement Agreement" or "Agreement"); and

Whereas, FHD, Southwest Volusia and the Authority entered into Addendums to the above referenced Reimbursement Agreement for reimbursement through September 30, 2019; and

Whereas, FHD, Southwest Volusia and the Authority desire to continue with the Program under the Agreement through September 30, 2020.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

- 1. The Authority shall continue with the reimbursement to FHD and Southwest Volusia (Collectively "Hospitals") for Qualified Physician Services, during the period from October 1, 2019 through September 30, 2020.**
- 2. The Reimbursement Period under the Agreement shall include the additional period from October 1, 2019 through September 30, 2020.**
- 3. The Reimbursement Rate under the Agreement shall remain the same, for the period from October 1, 2019 through September 30, 2020, as follows:**
 - (i) For inpatient care, a flat fee of \$315.79 per admission; and**
 - (ii) For Emergency Department care, a flat fee of \$68.42 per patient visit.**

The parties agree to review these rates in the event legislation or regulations are adopted, which materially affect the Medicare Physician Fee Schedule.
- 4. The Annual Payment Cap of \$225,000.00 (Two Hundred Twenty-Five Thousand Dollars) under the Agreement shall apply, for the combined reimbursement to the Hospitals by the Authority for Qualified Physician Services rendered by the Hospitals during the period from October 1, 2019 through September 30, 2020; provided however, the Hospitals hereby agree to pay physicians salaried or contracted by the Hospitals up to \$50,000.00 of the Annual Payment Cap and to utilize the remaining \$175,000.00 of the Annual**

Payment Cap to reimburse physicians that are salaried or contracted by its emergency physicians subcontractor (currently Emergency Medicine Professionals, P.A. ("EMPros")) for treating qualified Charity Care Patients in the emergency departments of the Hospitals. If by the deadline for submission of invoices for the Reimbursement Period either the Hospitals physicians or EMPros physicians have not exhausted their allocated portion of the Annual Payment Cap, the parties agree that the Hospitals may utilize the unexhausted amount to reimburse unpaid, but timely submitted invoices from the alternative group of physicians.

5. Any term not defined herein shall have the same meaning as under the Agreement.
6. The provisions of the Agreement shall continue to control the relationship of the parties, except as specifically modified by the content of this Addendum.

IN WITNESS THEREOF, the parties have executed this Addendum as of the day and year set forth below.

Two Witnesses:

Print Name

Print Name

ATTEST:

By: _____
Name: Andrew N. Ferrari
Title: Secretary

WEST VOLUSIA HOSPITAL AUTHORITY,
a special taxing district, public body corporate
and politic of the State of Florida

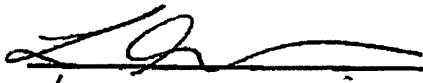
By: _____
Name: Judith L. Craig
Title: Chair
Date: _____

Two Witnesses:

Cindy L. Martin
Cindy L. Martin
Print Name

**SOUTHWEST VOLUSIA
HEALTHCARE CORPORATION d/b/a
ADVENTHEALTH FISH MEMORIAL,**
a Florida not for profit corporation

By: Eric Ostarly
Name: Eric Ostarly
Title: Chief Financial Officer
Date: 10-11-19


Luis A Rodriguez
Print Name

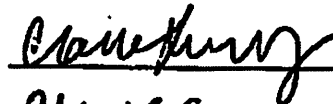
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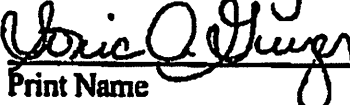


ATTEST:

By: _____
Name: _____
Title: _____

Two Witnesses:



Claire Sweeney
Print Name

Sonia A Guyer

Print Name

ATTEST:

By: _____
Name: _____
Title: _____

**MEMORIAL HOSPITAL-WEST VOLUSIA,
INC. d/b/a ADVENTHEALTH DELAND,**
a Florida not for profit corporation

By: 
Name: Kyle Glass
Title: Chief Financial Officer
Date: 10/11/19

(Corporate Seal)