

**LEASE AND TRANSFER AGREEMENT**

**AMONG**

**SOUTHEAST VOLUSIA HOSPITAL DISTRICT**

**SOUTHEAST VOLUSIA HEALTHCARE CORPORATION**

**ADVENTIST HEALTH SYSTEM SUNBELT HEALTHCARE  
CORPORATION**

**AND**

**BERT FISH MEDICAL CENTER, INC.**

**Executed April 1, 2016**

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## LEASE AND TRANSFER AGREEMENT

**THIS LEASE AND TRANSFER AGREEMENT** (this "Agreement") is executed this 1st day of April 2016 (the "Execution Date"), by and among **SOUTHEAST VOLUSIA HOSPITAL DISTRICT**, an independent special tax district of the State of Florida ("Lessor"), **SOUTHEAST VOLUSIA HEALTHCARE CORPORATION**, a Florida not-for-profit corporation ("Lessee"), **ADVENTIST HEALTH SYSTEM SUNBELT HEALTHCARE CORPORATION**, a Florida not-for-profit corporation ("AHS"), and **BERT FISH MEDICAL CENTER, INC.**, a Florida not-for-profit corporation ("BFMCI").

### WITNESSETH:

**WHEREAS**, Lessor is an independent special district of the State of Florida that was created in 1947 by a special act of the Florida Legislature (Chapter 1947-24961, 1947 Laws of Florida 3025-3034), now codified in Chapter 2003-310, 2003 Laws of Florida 48-56, as amended by Chapter 2011-248, 2011 Laws of Florida (the "Enabling Act");

**WHEREAS**, Lessor owns the Hospital Real Property (as defined below);

**WHEREAS**, as of the Execution Date of this Agreement, Lessor is leasing the Hospital Real Property to BFMCI under a Lease and Transfer Agreement dated May 1, 1995, as amended on November 4, 2003, and re-enacted on July 1, 2011 (the "Existing Lease") and, under the Existing Lease, BFMCI is operating the Hospital (as defined below);

**WHEREAS**, pursuant to the Enabling Act, Lessor is empowered to establish, construct, operate and maintain hospitals for the preservation of the public health, which may be carried out directly by Lessor or, in lieu thereof, Lessor is authorized to enter into one or more contracts (for a period not exceeding twenty-five years) with any hospital existing within the Taxing District (as defined below) for the purpose of providing health care facilities and services to the poor and indigent;

**WHEREAS**, pursuant to Florida Statutes Section 155.40(5), Lessor conducted an evaluation of the possible benefits to the affected community from the sale or lease of the Hospital to a third party, including holding a public hearing and retaining Community Hospital Consulting, Inc. ("CHC") to render an independent, objective operating comparison of the Hospital to like organizations;

**WHEREAS**, following the CHC objective operating comparison, Lessor determined that it was no longer in the best interest of the affected community to operate the Hospital and elected to consider a sale or lease of the Hospital to a third party;

**WHEREAS**, Lessor publicly advertised its offer to accept proposals in accordance with Florida Statutes Section 155.40 and received proposals from qualified prospective purchasers or lessees including, without limitation, Adventist Health System/Sunbelt, Inc. ("AHSS"), an affiliate of Lessee, and following an open and competitive process, in which all proposals to purchase or lease the Hospital that were received by Lessor were given consideration, Lessor voted on November 10, 2014, to enter into a Letter of Intent (as defined below) providing for the exclusive negotiations with AHSS, which has led to the negotiation of this Agreement;

**WHEREAS**, effective as of the Commencement Time (as defined below), Lessee desires to lease from Lessor and Lessor desires to lease to Lessee the Hospital Real Property in accordance with the terms of this Agreement;

**WHEREAS**, the parties intend that this Agreement will comply with Florida Statutes Section 155.40, including the exemption set forth in Florida Statutes Section 155.40(23)(a), and in support thereof, Lessor and BFMCI have agreed to terminate the Existing Lease effective as of the Commencement Time; and

**WHEREAS**, in recognition of the length of the Term of this Agreement (as defined below), normal wear and tear to the Hospital's furniture, furnishings and equipment and advancement in technology envisioned to occur during such period, the parties have agreed to enter into: (a) an Asset Purchase Agreement (attached hereto as **Exhibit A**) for all (or almost all) of the personal property utilized in association with the Hospital's operations and other assets described in the Asset Purchase Agreement; and (b) certain other ancillary agreements including a Healthcare Services Agreement (attached hereto as **Exhibit E**) for health care services rendered and facilities offered in the communities within the geographic area of Lessor as set forth in the Enabling Act, as amended.

**NOW, THEREFORE**, in consideration of the premises, covenants and agreements set forth herein, the parties hereto agree as follows:

## **ARTICLE I RECITALS**

The recitals set forth above are true and correct and are incorporated herein by this reference.

## **ARTICLE II DEFINITIONS**

Set forth below in this **Article II** are definitions of certain terms used in this Agreement. Certain other terms used herein are defined in other parts of the Agreement. See **Section 19.22** for a listing of the locations within this Agreement of certain other defined terms used herein. The following words, terms or phrases, when used in this Agreement, shall have the following meanings unless the context indicates a different meaning:

**2.1** "Adventist Tenets" is defined in **Article XVIII**.

**2.2** "Adverse Governmental Action" is defined in **Section 19.18**.

**2.3** "Agreement" means this Lease and Transfer Agreement as from time to time amended or supplemented pursuant hereto.

**2.4** "AHS" is defined in the preamble of this Agreement.

**2.5** "AHSS" is defined in the recitals to this Agreement.

**2.6** "BFMCI" is defined in the preamble to this Agreement.

**2.7** “**Capital Expenditure Commitment**” is defined in Section 3.4(a).

**2.8** “**Capital Expenditure Period**” means the initial sixty (60) month period beginning on the Commencement Date.

**2.9** “**Capital Expenditures**” means: (a) the costs to acquire, construct an item of property (real or personal [including equipment]) that has a value of \$2,500 or greater and a useful life of more than one year; (b) guarantees, leases/rentals with initial non-cancelable terms in excess of 12 months; (c) cash investments in business ventures that are accounted for under either the equity or cost basis; and (d) expenditures made to existing buildings, land improvements or equipment that extends the useful life of the respective asset or increases its productivity. For the avoidance of doubt, “Capital” shall be defined as set forth in AHS CWF 40.1 (the “Capital Allocation & Expenditure Policy”), as that policy may be amended from time to time. A current copy of AHS CWF 40.1 is attached hereto as Schedule 2.9.

**2.10** “**Change of Control**” is defined in Section 14.1(g).

**2.11** “**CHC**” is defined in the recitals to this Agreement.

**2.12** “**Code**” means the Internal Revenue Code of 1986, as amended, and all applicable existing and proposed regulations that may from time to time be issued thereunder.

**2.13** “**Commencement Date**” is defined in Section 15.1.

**2.14** “**Commencement Time**” is defined in Section 15.1.

**2.15** “**Community Health Clinic**” means the community health center presently located at 508 Palmetto Street, New Smyrna Beach, Florida 32168, at which location BFMCI offers primary health care services to individuals who are eligible to receive health care services at no cost or a reduced fee based on the individual’s ability to pay. Nothing herein shall be interpreted as precluding the relocation of the Community Health Clinic within the Taxing District nor altering the mode, method or mechanism by which health care is delivered by Lessee to the population historically eligible to be accepted as a patient of the Community Health Clinic.

**2.16** “**Contemplated Transaction**” means the transactions that are occurring pursuant to this Agreement.

**2.17** “**Contract**” means any legally binding written commitment, promise, contract, lease, sublease, license, sublicense or other agreement or arrangement of any kind which is an enforceable contract entered into in association with the use or operation of the Hospital Real Property. An oral contract shall not constitute a Contract unless it has been reduced to writing signed by all parties named therein.

**2.18** “**EBITDA**” means earnings before interest, taxes, depreciation and amortization.

**2.19** “**Enabling Act**” is defined in the recitals to this Agreement.

**2.20** “**Environmental Laws**” is defined in Section 10.6(a).

**2.21** “**Excess Sublease Term**” is defined in Section 13.1(b).

**2.22 “Existing Lease”** is defined in the recitals to this Agreement.

**2.23 “Fiscal Year of Lessee”** means the calendar year, except that the first Fiscal Year of Lessee shall commence on the Commencement Date and extend to and including December 31 of such Fiscal Year.

**2.24 “Fiscal Year of Lessor”** means October 1 of each calendar year to and including September 30 of the next calendar year.

**2.25 “Governmental Authority”** means any government or any agency, bureau, board, directorate, commission, court, department, official political subdivision, tribunal, special district or other instrumentality of any government, whether federal, state or local.

**2.26 “Hazardous Substances”** is defined in Section 10.6(a).

**2.27 “Hospital”** means the facility and institution presently known as Bert Fish Medical Center located at 401 Palmetto Street, New Smyrna Beach, Florida.

**2.28 “Hospital Real Property”** means the real property on which and in which the Hospital is located and real property used for parking by Hospital employees, visitors and customers (including patients and physicians) in association with the operations of the Hospital, more particularly described in Exhibit B attached hereto, and all buildings, fixtures, improvements, mechanical systems, driveways and parking areas located thereon or therein and all rights, easements and appurtenances thereto.

**2.29 “Improvements”** means any and all buildings, structures and other improvements now constituting part of the Hospital, including, without limitation, those improvements made as a substitution for or in renewal or replacement of any such buildings, structures or other improvements, any other additions, alterations and improvements to the Hospital and/or that are placed or installed in or upon the Hospital Real Property for use in the offering of clinical services associated with the Hospital.

**2.30 “Initial Term”** is defined in Section 3.1(a).

**2.31 “Involuntary Loss”** is defined in Section 11.5(a).

**2.32 “Joint Commission”** means The Joint Commission on Accreditation of Healthcare Organizations, an independent, not-for-profit organization that accredits and certifies health care organizations and programs.

**2.33 “Knowledge”**, when used in reference to a party to this Agreement, means (a) matters actually known by the chief executive officer, president, chief financial officer, chief operating officer, chief compliance officer, chair or vice chair of the Board of such party; (b) matters which any of the aforementioned individuals could reasonably be expected to know or discover in the course of said individual’s employment or position with such party; or (c) matters reported through any compliance program maintained by such party.

**2.34 “Lessee”** is defined in the preamble to this Agreement.

**2.35 “Lessor”** is defined in the preamble to this Agreement.

**2.36** “**Lessor Assumed Contracts**” is defined in Section 16.2.

**2.37** “**Letter of Intent**” means the agreement dated as of December 14, 2014, among AHSS, BFMCI and Lessor.

**2.38** “**Loss Account**” is defined in Section 11.5(d).

**2.39** “**MAI Appraiser**” means a MAI certified and accredited appraiser experienced in the valuation of hospitals in Florida.

**2.40** “**Medicare**” is defined in Section 7.7.

**2.41** “**Permit**” means any license, permit, approval, consent, certificate of need or certification (e.g., Medicare Provider Number) issued or granted by any Governmental Authority in order to operate the Hospital or any department thereof or equipment therein, and any accreditation (e.g., hospital, hospital laboratory) or certification (e.g., Primary Stroke Center) granted to the Hospital by the Joint Commission.

**2.42** “**Permitted Encumbrances**” means:

(a) liens for taxes and special assessments, if any, which are not then delinquent, or if then delinquent are being contested in accordance with the provisions of this Agreement;

(b) utility, access and other easements and rights-of-way, restrictions and exceptions which will not materially interfere with or materially impair the operation of the Hospital or any portion thereof (or if any portion is not then being operated, the operation for which they are designed or last modified);

(c) any mechanic’s, laborer’s, materialman’s, supplier’s or vendor’s lien or right in respect thereof, if any, if payment is not yet due under the contract in question or if such lien is being contested in accordance with the provisions of this Agreement;

(d) such minor defects and irregularities of title as customarily exist with respect to properties similar in character to the Hospital Real Property (during the Term) and which do not materially and adversely affect the value of the Hospital or materially impair the property affected thereby for the purpose for which it is held by Lessee;

(e) leases or subleases which relate to portions of the Hospital which are customarily the subject of such leases or subleases, such as office space for physicians and educational institutions, food service facilities, gift shops and radiology, pharmacy and similar departments to the extent the same are permitted by Section 13.1 hereof;

(f) zoning laws and similar restrictions;

(g) rights, titles and interests of the State, municipalities and the public in and to access over, under or upon a public way;

(h) restrictions or other encumbrances which relate to properties which are not contiguous to the Hospital Real Property and the loss of which would have no material adverse impact on the operations of the Hospital;



(i) liens, charges, encumbrances and restrictions in favor of Lessor which may be created or exist by reason of this Agreement; and

(j) other matters shown as exceptions on the leasehold title insurance commitment attached as **Exhibit B-1**.

**2.43 “Person”** means a natural person or any legal, commercial or governmental entity, such as, but not limited to, a general partnership, limited partnership, limited liability company, joint venture, trust, business association, group acting in concert or any individual acting in a representative capacity to a Person.

**2.44 “PTO Liability”** means the sum of the accrued liability for vacation, holiday benefits and other paid time off with respect to W-2 employees of BFMCI as of the date immediately preceding the Commencement Date.

**2.45 “Renewal Notice”** is defined in **Section 3.1(a)**.

**2.46 “Renewal Term”** is defined in **Section 3.1(a)**.

**2.47 “Rental Payment”** means any and all of the payments required to be made by Lessee pursuant to the terms hereof.

**2.48 “Rental Value”** is defined in **Section 3.2(a)**.

**2.49 “Rental Value Notice”** is defined in **Section 3.2(a)**.

**2.50 “Services Agreement” or “Healthcare Services Agreement”** is defined in **Section 14.1(i)**.

**2.51 “Shortage”** is defined in **Section 11.5(a)**.

**2.52 “State”** means the State of Florida.

**2.53 “Sublease”** is defined in **Section 13.1(a)**.

**2.54 “Tax-Exempt Organization”** means a corporation that is exempt from federal income taxation under Section 501(a) as a charitable organization described in Section 501(c)(3) of the Code and which is not a private foundation.

**2.55 “Taxing District”** means the geographical area of the Southeast Volusia Hospital District, as more particularly described in the Enabling Act.

**2.56 “Term” or “Term of this Agreement”** means the Initial Term and any Renewal Term.

**2.57 “Transition Plan”** is defined in **Section 16.8**.

### ARTICLE III LEASING OF HOSPITAL REAL PROPERTY; RENTAL PAYMENTS; CAPITAL COMMITMENT; SIGNAGE; PERMITS; CERTAIN TRANSFERS

#### **3.1 Leasing of Hospital Real Property: Quiet Enjoyment.**

(a) Lessor, for and in consideration of the payment by Lessee of the Rental Payments herein provided and the performance by Lessee of the covenants and agreements set forth herein, hereby leases and rents to Lessee, and Lessee hereby takes, accepts and rents from Lessor, the Hospital Real Property, subject to the Permitted Encumbrances to have and to hold for twenty five (25) years unless sooner terminated under the terms of this Agreement (the “Initial Term”). The Initial Term shall commence at the Commencement Time on the Commencement Date. Lessee shall have the right to extend this Agreement, on the terms and conditions set forth herein (other than Rental Payments due with respect to the Renewal Term) for up to two (2) consecutive additional periods of twenty-five (25) years each unless this Agreement has expired or terminated earlier (each, a “Renewal Term”); provided, Lessee gives to Lessor a written notice of the exercise of its right to extend not less than sixty (60) days following receipt of Lessor’s Rental Value Notice (the “Renewal Notice”), and provided on the date Lessee exercises its right to extend, it is not then in default under the terms of this Agreement.

(b) Beginning as of the Commencement Time, Lessor grants to Lessee possession of the Hospital Real Property, including those Improvements located on the Hospital Real Property at the Commencement Time, and agrees that so long as Lessee shall pay the Rental Payments as provided herein and observe and perform all of the terms, covenants, conditions, provisions, stipulations and agreements of this Agreement obligatory upon Lessee, then Lessee shall have, hold and enjoy, during the Term of this Agreement, peaceful, quiet and undisputed possession of the Hospital Real Property, including such Improvements, without hindrance or molestation by anyone claiming by or through Lessor, subject, however, to the provisions of this Agreement.

(c) Lessee agrees to accept possession of the Hospital Real Property, including those Improvements located on the Hospital Real Property, as of the Commencement Time, and accepts the Hospital Real Property, including such Improvements, in an “AS IS” and existing condition, after having inspected the same to its satisfaction.

(d) Lessee recognizes that this Agreement provides for Lessee’s maintaining and repairing the Hospital Real Property, including the Improvements located thereon as of the Commencement Time, at its sole cost and expense, as more specifically provided in Article X. Accordingly, excepting any warranties that may be expressly set forth herein, Lessee hereby accepts the Hospital Real Property without warranties of any kind, express or implied, from Lessor, including, without limitation, any warranties regarding merchantability, fitness for a particular purpose, habitability, suitability or tenantability.

### **3.2 Rental Payments; Initial Term; and Renewal Terms.**

(a) In consideration of the leasing of the Hospital Real Property to Lessee hereunder for the Initial Term, Lessee agrees to remit for the Initial Term the sum of Eighteen Million Six (\$18,676,259.01)(“Rental Payment”) as prepaid rent, less an amount equal to the PTO Liability. The parties agree that for purposes of calculating the Rental Payment due on the Commencement Date, the PTO Liability as reflected on the unaudited financial statements of BFMCI as of March 14, 2016, will be used, with the understanding that the parties will reconcile said amount with the actual PTO Liability as of the date immediately preceding the Commencement Date within forty-five (45) days following the Commencement Date, with any sum due by either party to the other remitted thereafter within fifteen (15) days. The Rental Payment for the Initial Term shall be payable to Lessor in immediately available funds on or before the Commencement Date. If there is not then an Event of Default of Lessee, and Lessee desires to have this Agreement extended

for the first Renewal Term, Lessee shall give notice to Lessor of such desire not later than thirty-two (32) months prior to the expiration of the Initial Term. If such notice is given, then, not later than twenty-nine (29) months prior to the expiration of the Initial Term, Lessor and Lessee shall meet in an effort to negotiate, in good faith, the Rental Value (as hereinafter defined) for the first Renewal Term that would take effect as of the first day of the first Renewal Term. If Lessor and Lessee have not agreed upon the Rental Value for the first Renewal Term at least twenty-six (26) months prior to the expiration of the Initial Term, then the Rental Value shall be determined by appraisal, as follows: Lessor and Lessee shall attempt to agree in good faith upon a single MAI Appraiser not later than one year and three hundred sixty (360) days prior to the expiration of the Initial Term. If Lessor and Lessee do not agree upon a single MAI Appraiser within such time period, then Lessor and Lessee shall each appoint one MAI Appraiser and shall provide the other party with written notice of the name of the appraiser so appointed not later than one year and three hundred forty-five (345) days prior to the expiration of the Initial Term, and within ten (10) days thereafter, the two appointed MAI Appraisers shall appoint a third MAI Appraiser and the Rental Value of the Hospital Real Property shall be the arithmetic average of the two (2) of the three (3) appraisals which are closest in amount, and the third appraisal shall be disregarded. Lessor and Lessee shall instruct the MAI Appraisers to complete their determination of the Rental Value not later than Two Hundred (200) days prior to expiration of the Initial Term. In the event either party fails to give written notice of the appraiser selected by said party within the time period allowed (i.e., one year and 345 days prior to the expiration of the Initial Term), a written "reminder notice" shall be sent by Lessor and/or Lessee, as the case may be, to the party who failed to give notice of the name of the appraiser selected. Thereafter, if either Lessor or Lessee has failed to appoint its MAI Appraiser (and provide written notice of said selection) not later than one year and three hundred fifteen (315) days prior to the expiration of the Initial Term, the single MAI Appraiser appointed shall determine the Rental Value of the Hospital Real Property for the first Renewal Term. If both parties fail to appoint MAI Appraisers within the prescribed time periods, then the first MAI Appraiser thereafter selected by a party shall determine the Rental Value for the first Renewal Term. If Lessor and Lessee mutually agree upon a single MAI Appraiser, the cost shall be borne by Lessee, otherwise, each party shall bear the cost of its own MAI Appraiser and the parties shall share equally the cost of the third MAI Appraiser, if applicable.

For the purposes of such appraisal, the term "Rental Value" shall represent the value of the use of the Hospital Real Property, which shall be equal to the greater of: (i) the fair market value of the Hospital Real Property as of the time of the appraisal without taking into account any value attributable to the Improvements, the cost of demolition of the Improvements or any value attributable to the businesses which have been or then are being operated on the Hospital Real Property by Lessee or Lessee's subtenants; and (ii) the fair market value of the Hospital Real Property as of the time of the appraisal without taking into account any value attributable either to the businesses which have been or then are being operated on the Hospital Real Property by Lessee (or any permitted subtenants) or to any capital Improvements constructed or added by Lessee or Lessee's subtenants, during the Initial Term.

When the Rental Value of the Hospital Real Property for the first Renewal Term is determined (whether arrived at by mutual agreement of the parties or established by appraisal), Lessor shall deliver written notice to Lessee which shall set forth in writing the Rental Value for the first Renewal Term and whether Lessor has approved or disapproved the execution of a new Services Agreement (the "Successor Services Agreement") for a term of twenty-five (25) years (to commence on the first day of the first Renewal Term) on the same terms as set forth in the

Services Agreement dated as of the date hereof, excluding the amount of the annual District Payment (as defined therein), which shall be capped at \$3,029,130 for each Fiscal Year of Lessor during the first Renewal Term (the "Rental Value Notice"). Thereafter, Lessee shall deliver its Renewal Notice to Lessor of Lessee's election to renew within sixty (60) days after the date on which Lessee receives from Lessor the Rental Value Notice. If Lessee does not deliver such Renewal Notice to Lessor within such sixty (60) day period, or if Lessee does deliver such Renewal Notice to Lessor within such sixty (60) day period but does not remit to Lessor the Rental Value for the first Renewal Term on or before the first day of the first Renewal Term, the Term of this Agreement shall automatically expire at the end of the Initial Term. In the event Lessee delivers a Renewal Notice to Lessor within such sixty (60) day period, this Agreement shall be extended for the first Renewal Term, subject to any earlier termination under the terms of this Agreement, and Lessee shall pay to Lessor an amount equal to the Rental Value for the first Renewal Term on or before the first day of the first Renewal Term, with one three hundredth ( $1/300$ ) of the Rental Value amortized each month of the first Renewal Term.

If there is not then an Event of Default of Lessee, and Lessee desires to have this Agreement extended for the second Renewal Term, Lessee shall give notice to Lessor of such desire not later than thirty-two (32) months prior to the expiration of the first Renewal Term. If such notice is given, then, not later than twenty-nine (29) months prior to the expiration of the first Renewal Term, Lessor and Lessee shall meet in an effort to negotiate, in good faith, the Rental Value for the second Renewal Term that would take effect as of the first day of the second Renewal Term. If Lessor and Lessee have not agreed upon the Rental Value for the second Renewal Term at least twenty-six (26) months prior to the expiration of the first Renewal Term, then the Rental Value shall be determined by appraisal, as follows: Lessor and Lessee shall attempt to agree in good faith upon a single MAI Appraiser not later than one year and three hundred sixty (360) days prior to the expiration of the first Renewal Term. If Lessor and Lessee do not agree upon a single MAI Appraiser within such time period, then Lessor and Lessee shall each appoint one MAI Appraiser and shall provide the other party with written notice of the name of the appraiser so appointed not later than one year and three hundred forty-five (345) days prior to the expiration of the first Renewal Term and within ten (10) days thereafter, the two appointed MAI Appraisers shall appoint a third MAI Appraiser and the Rental Value of the Hospital Real Property shall be the arithmetic average of the two (2) of the three (3) appraisals which are closest in amount, and the third appraisal shall be disregarded. Lessor and Lessee shall instruct the MAI Appraisers to complete their determination of the Rental Value not later than Two Hundred (200) days prior to expiration of the first Renewal Term. In the event either party fails to give written notice of the appraiser selected by said party within the time period allowed (i.e., one year and 345 days prior to the expiration of the first Renewal Term), a written "reminder notice" shall be sent by Lessor and/or Lessee, as the case may be, to the party who failed to give notice of the name of the appraiser selected. Thereafter, if either Lessor or Lessee has failed to appoint its MAI Appraiser (and provide written notice of said selection) not later than one year and three hundred fifteen (315) days prior to the expiration of the first Renewal Term, the single MAI Appraiser appointed shall determine the Rental Value of the Hospital Real Property for the second Renewal Term. If both parties fail to appoint MAI Appraisers within the prescribed time periods, then the first MAI Appraiser thereafter selected by a party shall determine the Rental Value for the second Renewal Term. If Lessor and Lessee mutually agree upon a single MAI Appraiser, the cost shall be borne by Lessee; otherwise, each party shall bear the cost of its own MAI Appraiser and the parties shall share equally the cost of the third MAI Appraiser, if applicable.

For the purposes of such appraisal, the term “Rental Value” shall represent the value of the use of the Hospital Real Property, which shall be equal to the greater of: (i) the fair market value of the Hospital Real Property as of the time of the appraisal without taking into account any value attributable to the Improvements, the cost of demolition of the Improvements or any value attributable to the businesses which have been or then are being operated on the Hospital Real Property by Lessee or Lessee’s subtenants; and (ii) the fair market value of the Hospital Real Property as of the time of the appraisal without taking into account any value attributable either to the businesses which have been or then are being operated on the Hospital Real Property by Lessee (or any permitted subtenants) or to any capital Improvements constructed or added by Lessee or Lessee’s subtenants, during the Initial Term and the first Renewal Term.

When the Rental Value of the Hospital Real Property for the second Renewal Term is determined (whether arrived at by mutual agreement of the parties or established by appraisal), Lessor shall deliver written notice to Lessee which shall set forth in writing the Rental Value for the second Renewal Term and whether Lessor has approved or disapproved the execution of a new Services Agreement (the “Successor Services Agreement”) for a term of twenty-five (25) years (to commence on the first day of the second Renewal Term) on the same terms as set forth in the Services Agreement, dated the same date as this Agreement, excluding the amount of the annual District Payment (as defined therein), which shall be capped at \$3,029,130 for each Fiscal Year of Lessor during the second Renewal Term (the “Rental Value Notice”). Thereafter, Lessee shall deliver its Renewal Notice to Lessor of Lessee’s election to renew within sixty (60) days after the date on which Lessee receives from Lessor the Rental Value Notice. If Lessee does not deliver such Renewal Notice to Lessor within such sixty (60) day period, or if Lessee does deliver such Renewal Notice to Lessor within such sixty (60) day period but does not remit to Lessor the Rental Value for the second Renewal Term on or before the first day of the second Renewal Term, the Term of this Agreement shall automatically expire at the end of the first Renewal Term. In the event Lessee delivers a Renewal Notice to Lessor within such sixty (60) day period, this Agreement shall be extended for the second Renewal Term, subject to any earlier termination under the terms of this Agreement, and Lessee shall pay to Lessor an amount equal to the Rental Value for the second Renewal Term on or before the first day of the second Renewal Term, with one three hundredth (1/300) of the Rental Value amortized over the second Renewal Term.

(b) In the event Lessee shall fail to make any Rental Payment under Section 3.2(a) above when due, Lessor shall also have the remedies provided in Article XIV.

(c) On and after termination of this Agreement, unless termination is attributable to an Event of Default specified in Section 3.2(c) hereof by Lessee, Lessee’s obligations to remit Rental Payments shall cease, and, once Lessee has peacefully vacated and surrendered possession of the Hospital Real Property and all Improvements thereon, as required by Section 14.6, Lessee shall be entitled to receive, in addition to any other remedies available to Lessee, from Lessor, a return of the unamortized portion of the prepaid rent for the term in progress (Initial Term, first Renewal Term or second Renewal Term) within one hundred eighty (180) days after such vacating and surrender. Such unamortized portion shall be determined by amortizing the prepaid Rental Payment for the Initial Term or the applicable Renewal Term, as the case may be, on a straight line basis over the period of the Initial Term or the applicable Renewal Term, as the case may be.

**3.3 Absolute Obligation to Pay Rental Payments.** Except as otherwise provided in this Agreement, the obligation of Lessee to make the Rental Payments in accordance with Section 3.2 hereof shall be a general obligation of Lessee, shall be absolute and unconditional and shall not be abated, rebated, set off, reduced, abrogated, waived, diminished or otherwise modified in any manner or to any extent whatsoever, regardless of any rights of setoff, recoupment or counterclaim that Lessee might otherwise have against Lessor.

**3.4 Capital Expenditure Commitment.**

(a) During the Capital Expenditure Period, Lessee will make not less than Thirty Five Million Dollars (\$35,000,000.00) in Capital Expenditures to benefit the Hospital and/or the Hospital Real Property (includes those items of Capital as described in AHS CWF 40.1 Policy, as amended) (the “Capital Expenditure Commitment”). In the event this Agreement terminates prior to the end of the Capital Expenditure Period because of an Event of Default of Lessor specified in Section 14.1(h), Section 14.1(i), Section 14.1(j), or Section 14.1(k) or due to termination pursuant to Section 11.5(b) or Section 19.18 of this Agreement, Lessee’s obligations to make any portion of the Capital Expenditure Commitment that has not already been made shall terminate. Items that Lessor and Lessee have agreed constitute Capital Expenditures that should be given a priority are listed on Schedule 3.4 (understanding that facts may dictate the order in which they are undertaken by Lessee and that events may arise that will necessitate Lessee identifying the Capital Expenditures that need to be given a priority in order to address a critical need or regulatory requirement affecting the operations of the Hospital). During each year of the Capital Expenditure Period, Lessee agrees to provide to Lessor, not later than ninety (90) days prior to the beginning of the Fiscal Year of Lessee, a copy of that portion of Lessee’s business plan that identifies or otherwise relates to Capital Expenditures envisioned to be made during said Fiscal Year with respect to the Hospital and/or Hospital Real Property.

(b) Following the Capital Expenditure Period, Capital Expenditures by Lessee shall be governed by AHS CWF 40.1 Policy, as amended.

**3.5 Net Lease.** Lessor and Lessee each state and represent that: (a) it is the intention of each of them that this Agreement be interpreted and construed as an absolute net lease, with all taxes, insurance, utilities, construction, maintenance, repair and other expenses associated with the occupancy and/or use of the Hospital Real Property to be paid for by Lessee, excluding taxes, assessments, insurance, utilities and other expenses incurred by or attributable to Lessor’s (or BFMCI’s) possession of the Hospital Real Property prior to the Commencement Time; (b) all rent shall be paid by Lessee to Lessor without abatement, deduction, diminution, deferment, suspension, reduction or setoff except as otherwise may be specifically set forth in this Agreement; (c) the obligations of Lessee shall not be affected by damage to or destruction of the Hospital Real Property or any part thereof from whatever cause, except as otherwise may be specifically set forth in Article XI or elsewhere in this Agreement; and (d) the obligations of Lessee shall not be affected by any condemnation, eminent domain or like proceedings, except as otherwise may be specifically set forth in Article XI or elsewhere in this Agreement. Lessor and Lessee further expressly intend that all costs or expenses of any character or kind, general or special, ordinary or extraordinary, foreseen or unforeseen, that may be necessary or required in and about the Hospital or Hospital Real Property, or any portion thereof, during Lessee’s possession or authorized use thereof, shall be paid by Lessee, except as otherwise specifically set forth in this Agreement.

**3.6 Agreement of BFMCI.** Pursuant to Section 155.40(23)(a), BFMCI agrees to the lease contained in this Agreement; provided, however, that Lessor and Lessee agree that BFMCI is not incurring and will not incur any liability or obligation under this Agreement by virtue of its agreement in this **Section 3.6**, except as otherwise specifically set forth in this Agreement.

**3.7 Signs.** Lessee shall have the right to place a sign or signs on or at the Hospital or any other part of the Hospital Real Property identifying the operator of the Hospital as being that of Lessee, an entity affiliated with AHS, and/or otherwise advising the public of the services offered at or within the Hospital Real Property, all of which shall be in accordance with applicable sign ordinances.

**3.8 Permits.** Lessor and/or BFMCI, as applicable, agree to assign to Lessee all assignable Permits associated with the use and/or operation of the Hospital or any other part of the Hospital Real Property and for any Permit, not assignable by law, reasonably cooperate with Lessee (at Lessee's sole cost) in obtaining a replacement for such Permit. BFMCI shall remain responsible for all claims that may be raised regarding its use of a Permit prior to the Commencement Time.

**3.9 Medical Records of Patients; Other Records.** The Hospital Real Property serves as a depository for records, including accreditation records, business records, clinical records (that are not part of a patient medical record) related to the operations of the Hospital, corporate records, employment records, financial records, library records, licensure records, patient medical records, medical staff records, tax records and other records required to be maintained by law, the ownership of which is vested in Lessor and/or BFMCI immediately prior to the Commencement Date (collectively the "**Lessor Records**"). In recognition that all or part of the Lessor Records may need to be accessed by the parties hereto in association with their respective operations, the parties have agreed to enter into a Records Custodian Agreement (attached hereto as **Exhibit F**) in order to facilitate the transition of the Hospital on the Commencement Date.

## **ARTICLE IV REPRESENTATIONS AND WARRANTIES BY LESSOR**

Lessor represents and warrants to Lessee and AHS as follows:

**4.1 Organization.** Lessor is a special independent tax district and a public body corporate and politic of the State.

**4.2 Title to Hospital Real Property.** Lessor has good and sufficient fee simple absolute title for purposes of this Agreement in and to the Hospital Real Property, free and clear of any lien, claim, and encumbrance or security interest therein, except for those that constitute a Permitted Encumbrance or are acceptable to Lessee. There are no outstanding rights (including any right of first refusal), options, or contracts made on behalf of Lessor giving any Person any current or future right to acquire the Hospital Real Property or any interest therein or, following the Commencement Date, to sell or transfer to such Person or to any third party any material interest in any assets comprising the Hospital Real Property.

**4.3 Power and Authority.** Lessor has full power and authority, under the Enabling Act, to enter into this Agreement, to carry out the transactions contemplated hereunder, and to carry out its obligations hereunder, and Lessor has duly authorized the execution, delivery and performance of this Agreement.

**4.4 No Violation.** Except as otherwise provided in Schedule 4.4, Lessor is not subject to any limitation, restriction or provision of any nature whatsoever contained in the Enabling Act or in any evidence of indebtedness, indenture, commitment, agreement or contract to which Lessor is a party or by which it is bound, or subject to any existing judgment, order or decree binding upon Lessor, which in any way limits, restricts or prevents Lessor from entering into this Agreement or performing any of its obligations hereunder or under any contract to which it is a party. Except as otherwise provided in Schedule 4.4, Lessor is not in breach, default or violation of any statute, indenture, mortgage, deed of trust, note, loan agreement or other agreement or instrument which would allow the obligee or obligees thereof to take any action that would preclude performance by Lessor under this Agreement.

**4.5 Enforceability.** This Agreement constitutes the legal, valid and binding obligations of Lessor enforceable against Lessor in accordance with its terms, except insofar as (a) enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws of general application with respect to creditors, and (b) the remedy of injunctive and other forms of equitable relief may be subject to equitable defenses (including commercial reasonableness, good faith and fair dealing), and to the discretion of the court before which any proceeding therefor may be brought.

**4.6 Consents.** Except as otherwise provided in Schedule 4.6, Lessor has obtained all consents, approvals, authorizations and orders of Governmental Authorities that are required to be obtained by it as a condition to the execution, delivery and performance of this Agreement.

**4.7 No Litigation.** Except as otherwise provided in Schedule 4.7, there is no action, suit, proceeding, inquiry or investigation pending before any court or Governmental Authority or, to the Knowledge of Lessor, threatened against Lessor or its properties, including the Hospital Real Property, that: (a) would adversely affect the consummation of the transactions contemplated by this Agreement; or (b) would adversely affect the validity or enforceability of this Agreement.

**4.8 Environmental.** To the Knowledge of Lessor, (a) Lessor has no liability under any Environmental Law with respect to the Hospital Real Property, and (b) Lessor is not responsible for any liability of any other Person under any Environmental Law with respect to the Hospital Real Property. There are no pending or, to the Knowledge of Lessor, threatened actions, suits, orders, claims, legal proceedings or other proceedings based on the environmental condition of the Hospital Real Property. Since July 1, 2011, Lessor has not received any formal or informal written notice of any complaint, order, directive, citation, notice of responsibility, notice of potential responsibility or information request from any Governmental Authority or any other Person and, to the Knowledge of Lessor, there are no facts which would reasonably be expected to form the basis for any such actions or notices arising out of or attributable to any environmental condition of the Hospital Real Property.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES BY LESSEE**

Lessee represents and warrants to Lessor and BFMCI as follows:

**5.1 Organization.** Lessee is a not-for-profit corporation duly incorporated, validly existing and having active status under the laws of the State.



**5.2 Power and Authority.** Lessee has full corporate power and authority to enter into this Agreement, to carry out the transactions contemplated hereby and to carry out its obligations hereunder to which it is a party, and Lessee has duly authorized the execution, delivery and performance of this Agreement.

**5.3 Tax-Exempt Status.** Lessee is a Tax-Exempt Organization. Lessee is a subordinate organization of the General Conference of Seventh-day Adventists and is covered by a group exemption letter issued to the General Conference of Seventh-day Adventists by the Internal Revenue Service.

**5.4 No Violation.** Lessee is not subject to any limitation, restriction or provision of any nature whatsoever contained in Lessee's Articles of Incorporation or Bylaws or in any evidence of indebtedness, indenture, commitment, agreement or contract to which Lessee is a party or by which it is bound, or subject to any existing judgment, order or decree binding upon Lessee, which in any way limits, restricts or prevents Lessee from entering into this Agreement or performing any of its obligations hereunder or under any contract to which it is a party. Additionally, Lessee is not in breach, default or violation of any statute, indenture, mortgage, deed of trust, note, loan agreement or other agreement or instrument which would allow the obligee or obligees thereof to take any action that would preclude performance by Lessee under this Agreement.

**5.5 Enforceability.** This Agreement constitutes the legal, valid and binding obligations of Lessee enforceable against Lessee in accordance with its terms, except insofar as (a) enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws of general application with respect to creditors, and (b) the remedy of injunctive and other forms of equitable relief may be subject to equitable defenses (including commercial reasonableness, good faith and fair dealing), and to the discretion of the court before which any proceeding therefor may be brought.

**5.6 Consents.** Except as otherwise provided in Schedule 5.6, Lessee has obtained all consents, approvals, authorizations and orders of Governmental Authorities that are required to be obtained by it as a condition to the execution, delivery and performance of this Agreement.

**5.7 No Litigation.** Except as otherwise provided in Schedule 5.7, there is no action, suit, proceeding, inquiry or investigation pending before any court or Governmental Authority, or, to the Knowledge of Lessee, threatened against Lessee or affecting Lessee or its properties that: (a) would adversely affect the consummation of the transactions contemplated by, or the validity or enforceability of this Agreement; (b) could have a materially adverse impact upon Lessee's financial condition or operations; or (c) that would adversely affect the validity or enforceability of this Agreement.

## **ARTICLE VI REPRESENTATIONS AND WARRANTIES BY AHS**

AHS represents and warrants to Lessor and BFMCI as follows:

**6.1 Organization.** AHS is a not-for-profit corporation duly incorporated, validly existing and having active status under the laws of the State.

**6.2 Power and Authority.** AHS has full corporate power and authority to enter into this Agreement and to carry out its obligations hereunder, and AHS has duly authorized the execution, delivery and performance of this Agreement.

**6.3 No Violation.** AHS is not subject to any limitation, restriction or provision of any nature whatsoever contained in AHS's Articles of Incorporation or Bylaws or in any evidence of indebtedness, indenture, commitment, agreement or contract to which AHS is a party or by which it is bound, or subject to any existing judgment, order or decree binding upon AHS, which in any way limits, restricts or prevents AHS from entering into this Agreement or performing any of its obligations hereunder or under any contract to which it is a party. Additionally, AHS is not in breach, default or violation of any statute, indenture, mortgage, deed of trust, note, loan agreement or other agreement or instrument which would allow the obligee or obligees thereof to take any action which would preclude performance by AHS under this Agreement.

**6.4 Enforceability.** This Agreement constitutes the legal, valid and binding obligations of AHS enforceable against AHS in accordance with its terms, except insofar as (a) enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws of general application with respect to creditors, and (b) the remedy of injunctive and other forms of equitable relief may be subject to equitable defenses (including commercial reasonableness, good faith and fair dealing), and to the discretion of the court before which any proceeding therefor may be brought.

**6.5 No Litigation.** There is no action, suit, proceeding, inquiry or investigation pending before any court or Governmental Authority, or, to the Knowledge of AHS, threatened against AHS or affecting AHS or its properties that: (a) would adversely affect the consummation of the transactions contemplated by, or the validity or enforceability of this Agreement; (b) could have a materially adverse impact upon AHS's financial condition or operations; or (c) that would adversely affect the validity or enforceability of this Agreement.

## **ARTICLE VII REPRESENTATIONS AND WARRANTIES BY BFMCI**

BFMCI represents and warrants to Lessee and AHS as follows:

**7.1 Organization.** BFMCI is a not-for-profit corporation duly incorporated, validly existing and having active status under the laws of the State.

**7.2 Power and Authority.** BFMCI has full corporate power and authority to enter into this Agreement and to carry out its obligations hereunder, and BFMCI has duly authorized the execution, delivery and performance of this Agreement.

**7.3 No Violation.** BFMCI is not subject to any limitation, restriction or provision of any nature whatsoever contained in BFMCI's Articles of Incorporation or Bylaws or, except as provided in Schedule 7.3, in any evidence of indebtedness, indenture, commitment, agreement or contract to which BFMCI is a party or by which it is bound, or subject to any existing judgment, order or decree binding upon BFMCI, which in any way limits, restricts or prevents BFMCI from entering into this Agreement or performing any of its obligations hereunder or under any contract to which it is a party. Additionally, BFMCI is not in breach, default or violation of any statute, indenture, mortgage, deed of trust, note, loan agreement or other agreement or instrument

which would allow the obligee or obligees thereof to take any action that would preclude performance by BFMCI under this Agreement.

**7.4 Enforceability.** This Agreement constitutes the legal, valid and binding obligations of BFMCI enforceable against BFMCI in accordance with its terms, except insofar as (a) enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws of general application with respect to creditors, and (b) the remedy of injunctive and other forms of equitable relief may be subject to equitable defenses (including commercial reasonableness, good faith and fair dealing), and to the discretion of the court before which any proceeding therefor may be brought.

**7.5 No Litigation.** Except as otherwise provided in Schedule 7.5, there is no action, suit, proceeding, inquiry or investigation pending before any court or Governmental Authority, or, to the Knowledge of BFMCI, threatened against BFMCI or affecting BFMCI or its properties, including the Hospital Real Property that: (a) would adversely affect the consummation of the transactions contemplated by this Agreement; or (b) that would adversely affect the validity or enforceability of this Agreement.

**7.6 Permits.** As of the Execution Date, BFMCI holds all material Permits necessary for the conduct of the business and operation of the Hospital Real Property as currently conducted. All such Permits are in full force and effect and unimpaired. Pharmacies, laboratories and all other material ancillary departments owned or operated by the Hospital, which are required to be specially licensed or to have Permits, are licensed by the appropriate Governmental Authority, or have such Permits issued by the appropriate Governmental Authority. To BFMCI's Knowledge, BFMCI is in compliance in all material respects with all Permits required by law with regards to the Hospital Real Property. There are no provisions in, or Assigned Contracts relating to, any such Permits which preclude or limit in any material respect BFMCI from operating the Hospital as operated as of the Execution Date. There is not now pending nor, to the Knowledge of BFMCI, threatened, any action by or before any Governmental Authority to revoke, cancel, rescind, modify or refuse to renew any of the Permits and all of the material Permits are in good standing.

**7.7 Participating Provider.** The Hospital is a "provider" with valid and current provider agreements and with one or more provider numbers through intermediaries (the "Provider Numbers") under Title XVIII of the Social Security Act ("Medicare"), Title XIX of the Social Security Act ("Medicaid") and TRICARE, with the federal Medicare program, all applicable state Medicaid, TRICARE, and any other similar or successor federal or state healthcare payment programs with or sponsored by any Government Authority collectively referred to herein as "Government Programs."

## ARTICLE VIII COVENANTS OF LESSOR

In addition to any other covenants made by Lessor herein, Lessor covenants to Lessee and AHS as follows:

**8.1** [Intentionally Omitted]

**8.2 Termination of Existing Lease.** Prior to the Commencement Time, Lessor and BFMCI shall have entered into the Termination of Existing Lease Agreement, to take effect as of the Commencement Time, a copy of which is attached hereto as Exhibit G.

**8.3 Medicaid Match.** Subject to changes in state or federal law affecting the manner of financing the Florida Medicaid program, and in accordance with the Services Agreement, Lessor agrees to continue to appropriate funds to qualify for federal matching funds for the benefit of Hospital's participation in the Florida Medicaid program.

**8.4 Community Health Improvement Programs.** In accordance with the Services Agreement and during the Initial Term of this Agreement, Lessor agrees to continue to provide financial support for the development and operation of community health improvement programs to improve access to cost effective primary and preventive care for indigent and underserved residents of the Taxing District.

## **ARTICLE IX COVENANTS OF LESSEE**

In addition to any other covenant made by Lessee herein, Lessee covenants to Lessor as follows:

**9.1 New Smyrna Health Park.** Within ninety (90) days following the Commencement Date ("Transfer Date"), Lessee shall cause New Smyrna Health Park, located at 125 Florida Memorial Parkway, New Smyrna Beach, Florida, to be operated in association with and for the support of the Hospital and its programs. As of the Transfer Date, the Hospital shall be credited with both the benefit (revenues) and the burden (expenses) of the operation of the New Smyrna Health Park beginning as of the Commencement Date.

**9.2 Accreditation.** Lessee shall cause the Hospital to maintain accreditation as a general acute care hospital by: (a) the Joint Commission; or (b) if the Joint Commission is no longer granted "deeming authority" by the Centers for Medicare & Medicaid Services, then by another national accrediting organization to which the Centers for Medicare & Medicaid Services has granted "deeming authority."

**9.3 Operation of Hospital.** Lessee will faithfully and efficiently administer, maintain and operate the Hospital as a charitable facility, open to the general public, free of all discrimination which is prohibited by current or future laws including, without limitation, discrimination based upon race, ethnicity, religion, creed, national origin, gender or age and will use, maintain and operate such on a revenue-producing basis, consistent with Lessee's obligations under this Agreement. Lessee further covenants and agrees that:

(a) it will at all times maintain and operate the Hospital to meet applicable standards and requirements and provide health care of such quality and in such manner as shall enable the Hospital to participate in, and provide services in connection with, Government Programs, and Lessee agrees that for a period of not less than seven (7) years following the Commencement Date it will participate in Government Programs, it will comply with the standards and requirements for remaining a participating medical facility thereunder, except to the extent, if any, that Lessee and Lessor shall determine, by agreement in writing, that it is not in the best interest of Lessee to comply therewith and that the financial condition of Lessee will not be materially and adversely affected by noncompliance;

(b) it will comply with applicable federal and state laws, as the same may be amended from time to time, prohibiting discrimination based on race, ethnicity, religion, creed, national origin, gender or age and any other form of discrimination prohibited by current or future laws;

(c) it will operate the Hospital as a general acute care hospital pursuant to a valid license issued by the State authorizing Lessee to operate a general acute care hospital on and in the Hospital Real Property and to furnish such other services as are offered by Lessee and which can lawfully be performed pursuant to a valid license or governmental approval;

(d) it will provide an appropriate medical screening and emergency medical services consistent with the provisions of the Emergency Medical Treatment and Active Labor Act and the State of Florida access to emergency services and care as set forth in Florida Statutes Section 395.1041 et seq., as may be from time to time amended or supplemented;

(e) it will not suffer or permit the Hospital to be used by any person or in any manner which would result in the loss of tax exemption of Lessee or Lessee's ceasing to be recognized as a Tax Exempt Organization;

(f) it will at all times comply with the provisions of Section 10.6 requiring compliance with all Environmental Laws (as defined therein) in the operation of the Hospital and in the use, handling, storage, generation, disposal and transport of Hazardous Substances and will indemnify and hold the Lessor Indemnified Persons, (as defined below), harmless from and against all losses, costs, expenses, claims and damages arising out of or in connection with violation of any Environmental Laws or the use, handling, storage, generation, disposal or transport of Hazardous Substances; and

(g) it will offer charity care consistent with AHS company-wide policies (e.g., CWF Policy 50.1), as amended and supplemented from time to time.

**9.4 Compliance With Applicable Law.** Lessee shall not use or occupy, nor permit any use or occupancy of, the Hospital Real Property, or any part thereof, contrary to any applicable law, ordinance, order, rule, regulation or requirement of any Governmental Authority now or hereinafter in force. Lessee covenants and agrees that, at its sole cost and expense, it shall promptly comply with all such applicable laws, ordinances, orders, rules, regulations and requirements of all Governmental Authorities, and shall maintain all material Permits required for the operation of the Hospital and the Hospital Real Property. Lessee shall also observe and comply with the requirements respecting the Hospital and the Hospital Real Property of all policies of insurance at any time in force with respect to the Hospital and the Hospital Real Property. Lessee will not use or occupy the Hospital Real Property or permit its use or occupancy in such manner as may prejudice Lessor's title to or interest in the Hospital Real Property, or any portion thereof, or as may provide a basis for claims of adverse use or possession by the public or implied dedication to public use of any part of the Hospital or the Hospital Real Property, or as may in any way impair the efficient operation, use or control of the Hospital Real Property or any part thereof.

## 9.5 Liens and Encumbrances.

(a) Except for Permitted Encumbrances, Lessee shall not create or suffer to be created any lien, encumbrance, security interest or charge upon the Hospital Real Property or any part thereof, and shall satisfy or cause to be discharged, or shall make adequate provision to satisfy and discharge, within thirty (30) days after the same shall be due or claimed, all lawful claims and demands for labor, materials, supplies or other items and any and all liens claimed or asserted in connection therewith.

(b) Without limiting the generality of the foregoing, nothing contained in this Agreement shall be construed as a consent on the part of Lessor to subject Lessor or its successors or permitted assigns to liability under the Construction Lien Law of the State, it being expressly understood that any such liability is expressly prohibited and that none of Lessor and its successors and permitted assigns shall be subject to such liability. Throughout the Term of this Agreement, Lessee shall strictly comply with the Construction Lien Law of the State as set forth in Chapter 713, Florida Statutes. In relation thereof, Lessee agrees to obtain and deliver to Lessor in accordance with the Construction Lien Law, written and unconditional waivers and releases of contractors' and materialmen's liens with respect to the Hospital Real Property for all work, service, labor or materials to be furnished at the request or for the benefit of Lessee to, at or in the Hospital Real Property, and any Notice of Commencement filed by Lessee shall (i) identify Lessee as the "owner" thereunder (and identifying Lessee as having a "leasehold interest") for purposes of the work, services, labor or materials, and (ii) identify Lessor as the "fee simple titleholder" thereunder. Such waivers and releases shall be signed by all "lienors" (as such term is defined under the Construction Lien Law) including without limitation any and all architects, engineers, designers, consultants, contractors, subcontractors, materialmen and laborers to become involved in such work, services, labor or materials. The short form memorandum of this Agreement described in Section 19.5 shall include such information as is required by Section 713.10, Florida Statutes, or otherwise is reasonably required for the purpose of protecting Lessor and its successors and permitted assigns from contractors' or materialmen's Claims of Lien, as provided in and required by Section 713.10, Florida Statutes. This Section 9.5 shall survive the expiration or earlier termination of this Agreement.

## 9.6 Payments.

(a) Lessee covenants and agrees to pay when due: (i) the Rental Payments identified in Section 3.2(a); (ii) all of its other obligations and indebtedness and all demands and claims against it; and (iii) all assessments, levies, taxes (ordinary or extraordinary, special or general) and insurance premiums, of every kind and nature, relating to the whole or any part of the Hospital or Hospital Real Property, or any interest therein, and all sales, use and excise taxes, if any, levied upon the Rental Payments and other payments due from Lessee under this Agreement, and all costs, expenses, liabilities and charges of every kind and nature including, without limitation, charges for gas, electricity, water, sewer and other utilities, relating to the use, operation, maintenance, repair, replacement and improvement by Lessee of the Hospital Real Property, or any part thereof, which may arise or accrue during the Term of this Agreement; provided, however, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as are required to be paid during the Term of this Agreement, and, provided further, Lessee shall have no obligation to pay for any expense (e.g., taxes, assessments, insurance, utilities, etc.) or claim incurred by or attributable to Lessor's (or BFMCI's) possession

of the Hospital Real Property prior to the Commencement Time, regardless of when the expense is due or claim is made. Lessee will furnish to Lessor, promptly after demand therefor, proof of payment of all items referred to above which are payable by Lessee.

(b) Lessee shall not be required to pay any obligation or indebtedness, other than the Rental Payments, demand, claim, tax, charge, assessment or imposition, or to remove any lien, charge or encumbrance required to be removed under this Agreement, so long as Lessee shall contest or there shall be contested on Lessee's behalf, in good faith and at Lessee's own cost and expense, the amount or validity thereof, in an appropriate manner by appropriate proceedings and by posting such bonds, which shall operate during the pendency thereof to prevent the collection or other realization of any such other obligation or indebtedness, or of any such demand, claim, tax, charge, assessment or imposition so contested, or the sale, forfeiture or loss of the Hospital Real Property or any part thereof or interest therein, to satisfy the same; provided, however, that no such contest shall subject Lessor to the risk of any liability or loss or materially impair the obligations of Lessee under this Agreement. Lessor shall have no obligation to join any such contest, and each such contest shall be promptly prosecuted to final conclusion by Lessee (subject to the right of Lessee to settle any such contest provided that Lessor and its successors and assigns are not subjected to any liability or obligation as a result of such settlement), and in any event Lessee will indemnify and hold harmless the Lessor Indemnified Persons against all losses, liabilities, claims, damages, judgments, decrees and costs (including, without limitation, attorneys' fees, court costs and costs of appeal) in connection therewith and will, promptly after the final determination of such contest or settlement thereof, pay and discharge the amounts which shall be levied, assessed or imposed or determined to be payable therein, together with all penalties, fines, interests, costs and expenses thereon or in connection therewith. Lessee shall give Lessor prompt notice of any such contest.

(c) If, in the reasonable opinion of counsel to Lessor, by nonpayment or non-removal of any of the items described in Section 9.6(a), the Hospital Real Property or any material part thereof will be subject to imminent loss or forfeiture, then Lessor shall be entitled to give Lessee notice thereof and Lessee shall promptly pay and remove all such unpaid and un-removed items and cause them to be satisfied and discharged. The provisions of this Section 9.6(c) shall not be applicable to the requirement of Lessee to pay the Rental Payments, which in each case Lessee acknowledges and agrees shall be due and payable in accordance with the applicable provisions of this Agreement.

**9.7 Lessor's Performance of Lessee's Obligations.** In the event Lessee at any time neglects, refuses or fails to perform any of its obligations under this Agreement, Lessor, at its option and following at least thirty (30) days' prior notice to Lessee, except where a shorter period of notice is necessary to prevent any loss to Lessor or any forfeiture with respect to Hospital Real Property or any portion thereof, or to prevent any material loss to the Hospital Real Property or any portion thereof, may (but is not obligated to) perform or cause to be performed such obligation, and all expenditures incurred by Lessor thereby shall be promptly paid or reimbursed by Lessee to Lessor within ten (10) days of written demand therefor, together with interest at the rate of prime (as established by Bank of America, N.A. or any successor) as of the date said sum was due from Lessee (or if not readily known, the date Lessor's demand for payment is received by Lessee).

## **9.8 Tax-Exempt Status.**

(a) Lessee covenants and agrees that it shall not perform any act or enter into any agreement which shall adversely affect Lessee's status as a Tax Exempt Organization, and Lessee shall conduct its operations and operate the Hospital so as to maintain Lessee's status as a Florida not-for-profit corporation and a Tax Exempt Organization. Lessee further covenants and agrees that it shall comply with all of the requirements of Section 501(r) of the Code.

(b) Lessor and Lessee agree to the extent permitted by law to take all such reasonable actions as the laws of the State permit to ensure that the Hospital Real Property is and remains, at all times during the Term of this Agreement, exempt from ad valorem and other state and local taxation to the maximum extent allowed by law. If, at any time during the Term of this Agreement, Lessee or Lessee's use and occupancy of the Hospital Real Property should become subject to the payment of ad valorem and other state and local tax, then in such event Lessee shall immediately be obligated to pay the full amount of such taxes, and any interest and penalties, if any, with respect thereto, and Lessee shall defend and indemnify and hold harmless the Lessor Indemnified Persons from and against the payment of any and all such taxes, interest and penalties, and any and all costs, demands, claims and liens asserted in connection therewith.

**9.9 Regulatory Controls.** Lessee covenants and agrees that it shall take all appropriate action to obtain such consents, exceptions, exemptions and approvals of Governmental Authority as may be necessary to permit it to comply fully with all of its covenants, stipulations, obligations and agreements contained in this Agreement. Lessor covenants to cooperate reasonably with Lessee in this regard, so long as such reasonable cooperation does not result in any costs being incurred by Lessor.

**9.10 Medical Staff.** Lessee shall: (a) grant or maintain privileges to all existing medical staff members who are in good standing at the Hospital immediately prior to the Commencement Date; (b) maintain appropriate procedures for review and amendment of the medical staff bylaws of the Hospital, and for appointment, reappointment, suspension and termination of medical staff privileges; (c) have the power and authority to grant medical staff privileges to qualified new applicants; and (d) take all other actions which it may deem necessary or appropriate with respect to medical staff bylaws and privileges including, without limitation, all final action regarding the granting, denial, suspension or revocation of medical staff privileges. The content of this **Section 9.10** shall not be construed to preclude Lessee from amending the Hospital's medical staff bylaws in the ordinary course of business.

**9.11 Medicare/Medicaid Filings.** For reporting periods commencing with the Commencement Time, Lessee shall be responsible for making all filings required under the Medicare, Medicaid and other federal and state payor programs; provided, however, that BFMCI shall remain responsible for making all filings required under the Medicare, Medicaid and other federal and state payor programs for periods prior to the Commencement Time. Lessee agrees to cooperate with BFMCI in the filing of its respective reports or other documents, including but not limited to any cost reports. Lessee shall be responsible for taking all actions with respect to any liability to the Medicare, Medicaid or other federal or state payor program for cost reports and/or health services rendered on and after the Commencement Time; provided, however, BFMCI shall remain responsible for taking all actions with respect to any liability to the Medicare, Medicaid or other federal and state payor programs for cost reports and/or health services rendered prior to the Commencement Time.



**9.12 Participating Provider Agreements.** Subject to the time limitation requirements set forth in Section 9.3(a), Lessee shall enter into such participating provider agreements with Medicare, Medicaid, TRICARE and such other third party payors and insurers as Lessee may deem appropriate.

**9.13 Governance of Lessee.** The business affairs of Lessee shall be governed by a Board of Directors selected in accordance with the Articles of Incorporation and Bylaws of Lessee. A copy of such Articles of Incorporation and Bylaws are attached to this Agreement as Schedule 9.13. Lessor hereby approves the Articles of Incorporation of Lessee in the form attached. The governing body of the Hospital, which for purposes of this Agreement will be, on and after the Closing Date, the same as the Board of Directors of Lessee, shall approve the content of the Articles of Incorporation and shall have the right to approve any amendments thereto.

## **ARTICLE X**

### **REPAIRS; ALTERATIONS; DEMOLITION; ENVIRONMENTAL MATTERS**

**10.1 Repairs.** Lessee shall take good care of the Hospital Real Property. Lessee shall keep the Hospital Real Property, including, without limitation, all vehicular and pedestrian entrances and exits, driveways, walkways, sidewalks, parking facilities, service drives and loading areas adjacent to the Hospital, neat, clean and free from dirt, trash or other rubbish at all times, and shall properly store all medical and other wastes, and shall arrange for the regular pick-up and disposal of all such medical or other wastes from the Hospital at Lessee's expense. Lessee shall take prudent measures to provide for the safety and security of its employees, agents, patients, visitors and others at the Hospital and on and in the Hospital Real Property, at Lessee's sole cost and expense, and shall make such repairs and replacements with respect to the Hospital Real Property, capital or otherwise, so that the same are kept safe, structurally sound, and neat and clean in appearance. Lessee shall not commit waste or damage or allow the Hospital Real Property to suffer waste or damage and shall not permit a nuisance to exist on the Hospital Real Property. Without limiting the generality of the foregoing, Lessee, at Lessee's sole cost and expense, shall keep and maintain the foundation, exterior walls, and roof of the Improvements on the Hospital Real Property in good order and repair and shall make all needed repairs and replacements of all cracked or broken glass and all lighting, heating, air conditioning, life safety, food service, utility metering, plumbing, water heating, sprinkling and other electrical, mechanical and electromotive installations, equipment and fixtures in or serving the Hospital Real Property. Lessee shall arrange for periodic inspection, cleaning, maintenance and repair of any lighting, heating, air conditioning, life safety, food service and other equipment requiring regular inspection, cleaning, maintenance and repair located in, on or about the Hospital Real Property, or any part thereof, at Lessee's sole cost and expense, by qualified service technicians and at regular intervals approved by Lessor. If any repairs or replacements required to be made by Lessee hereunder are not made within ten (10) days after notice is given to Lessee by Lessor, Lessor may at its option make such repairs or replacements without liability to Lessee for any loss or damage which may result by reason thereof; and Lessee shall pay to Lessor upon demand, as additional Rental Payments hereunder, the cost of such repairs or replacements.

**10.2 Alterations, Additions and Removal.** Lessee may, at its expense and in its sole discretion, make additions and alterations to the Hospital Real Property of any kind (including, without limitation, construction of Improvements and/or the renovation of existing Improvements) that are reasonably calculated to improve the usefulness and value of the Hospital Real Property as a

site whereat general acute care hospital and related health care services are offered without prior consultation with or consent of Lessor.

**10.3 Demolition.** Lessee shall not, without Lessor's prior written consent, demolish the Hospital or any other improvements on the Hospital Real Property (or any portion thereof) in any material respect unless such demolition is in connection with a project by Lessee to repair, remodel or make additions or Improvements to the Hospital Real Property permitted or contemplated under the terms of this Agreement.

**10.4 Work.** All construction and removal work by Lessee on or in the Hospital Real Property shall be performed in a good and workmanlike manner, by licensed and insured contractors, in compliance with all governmental requirements, laws, ordinances, rules and regulations affecting the Hospital Real Property or the removal of any substances therefrom. Lessee agrees to indemnify and hold harmless the Lessor Indemnified Persons from and against any and all claims, demands, losses, liabilities, damages, costs, fines and penalties resulting from or arising in connection with the performance of such work.

**10.5 Lessor's Right of Access.** Lessor and its agents and representatives shall have the right to enter upon the Hospital Real Property at any time and from time to time for the purpose of inspecting the same, or of making repairs in accordance with Section 10.1, or during an event of emergency.

**10.6 Environmental Matters.**

(a) Lessee shall comply with all applicable federal, state and local laws, ordinances, orders, rules and regulations in effect from time to time concerning the protection of the environment (the "Environmental Laws") and affecting the Hospital Real Property or the operation of any Improvements located thereon. Notwithstanding anything in this Agreement to the contrary, except as required in Lessee's operation of any of the Improvements and then only in accordance with Environmental Laws, Lessee shall not use, store, handle, manufacture, process or dispose of in, on or about the Hospital Real Property any substance, material, chemical, gas, waste or other matter which is governed by the Environmental Laws or is harmful to the environment (the "Hazardous Substances").

(b) Lessee will not do or permit anything to be done in, on or about the Hospital Real Property that would violate any Environmental Laws. Any Hazardous Substances (including, without limitation, any construction or remodeling wastes) shall be removed from the Hospital Real Property by Lessee and shall be properly disposed of in compliance with all Environmental Laws at Lessee's sole cost and expense.

(c) Lessee hereby agrees to indemnify and hold harmless the Lessor Indemnified Persons from and against any and all claims, actions, liens, demands, costs, expenses, penalties, fines and judgments (including, without limitation, court costs and attorney's fees) resulting from or arising by reason of the violation of this Section 10.6 or any Environmental Laws by Lessee, its agents, employees, contractors, subtenants or licensees.

(d) Lessee's obligations under this Section 10.6 shall survive the expiration or termination of this Agreement.

(e) Lessee shall provide Lessor with copies of all correspondence, claims, directives, reports, notices, orders, filings and the like directed to or received from Governmental Authorities evidencing, implying, reporting or otherwise indicating violations or alleged violations of Environmental Laws, including, without limitation, releases of Hazardous Substances by Lessee or by another if in connection with Lessee's operations or activities on the Hospital Real Property or the condition in, of, on or under the Hospital Real Property, whether authorized by Lessee or another and such shall be provided to Lessor within seven (7) days of receipt by Lessee.

(f) Lessor and its agents and representatives shall have the right, but neither the obligation nor duty, to take samples in quantity sufficient for scientific analysis of all products, materials or other substances brought onto or made or produced on or in the Hospital Real Property by Lessee or another claiming by, through or under Lessee or otherwise present on the Hospital Real Property. Lessee may not perform any sampling, testing or drilling to locate Hazardous Substances on the Hospital Real Property without Lessor's prior written consent, not to be unreasonably withheld or delayed.

(g) Notwithstanding anything contained in this Agreement to the contrary, Lessee shall reimburse, defend, indemnify and hold harmless the Lessor Indemnified Persons from and against any and all claims, fines, losses, penalties, liabilities, damages, costs and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of or in any way connected with the presence of, in, on, under or about the Hospital Real Property (or the subsurface thereof) of any Hazardous Substance or the violation of any Environmental Laws caused by Lessee or another occupant claiming by, through or under Lessee, including, without limitation, the costs of any required or necessary investigation, repair, remedial or response action, clean-up or detoxification and the preparation of any closure or other required plans or remedies in connection therewith, whether voluntary or compelled by any Governmental Authority. The indemnity obligations of Lessee under this Section 10.6(g) shall survive any termination or expiration of this Agreement.

(h) If any investigations, studies, sampling, testing, removal, remediation or other actions become necessary to clean-up and/or remove Hazardous Substances on, under from or affecting the Hospital Real Property, Lessee shall conduct, at its expense, such activities in accordance with all applicable Environmental Laws, and in accordance with the orders and directives of all Governmental Authorities, keeping Lessor reasonably informed of all actions taken and conditions existing on the Hospital Real Property.

## **ARTICLE XI**

### **INSURANCE; CONDEMNATION; PROCEEDS; CASUALTY**

**11.1 Required Insurance.** At all times during the Term of this Agreement, Lessee shall maintain or cause to be maintained the following insurance coverages:

(a) insurance against loss by fire (with uniform standard extended coverage endorsements), flood, crime, vandalism, and malicious mischief insurance, as may be approved for issuance in the State, including, without limitation, insurance against loss or damage from lightning, windstorm, sinkholes, sprinkler leakage, civil commotion, aircraft, vehicles, smoke and other risks which at the time are included under "extended coverage" endorsements and

other forms of broadened risk perils, covering the Hospital Real Property and at all times in an amount not less than 100% of the actual replacement value thereof;

(b) insurance coverage of boilers, pressure vessels, auxiliary piping and selected machinery objects (e.g., pumps and compressors);

(c) comprehensive public liability insurance, including, without limitation, malpractice insurance, against claims for bodily injury, death and property damage occurring on, in or about the Hospital Real Property and adjoining streets and sidewalks, in the amounts no less than Ten Million Dollars (\$10,000,000.00) for each and every incident, or such greater amounts as from time to time are customarily maintained by, and generally available to, the operators of other hospitals comparable to the Hospital;

(d) comprehensive automobile liability insurance;

(e) comprehensive errors and omissions insurance;

(f) workers' compensation and unemployment coverages at not less than as required by the State and to the extent necessary to protect Lessor and Lessee and the Hospital Real Property against worker's compensation claims;

(g) builder's risk insurance during the construction of any Improvements;

(h) business interruption insurance; and

(i) directors' and officers' liability insurance/including employer practices liability insurance.

**11.2 Insurers and Policies.** Lessee agrees that each commercial insurance policy maintained pursuant to Section 11.1 hereof (a) shall be issued by such insurer (or insurers) as are legally qualified to issue such insurance, and that are rated "A-VII" or better by A.M. Best, (b) shall be in such forms and with such provisions (including, without limitation, a loss payable clause, a waiver of subrogation clause, and the designation of the named insureds) as are generally considered standard provisions for the type of insurance involved, and (c) shall prohibit cancellation or substantial modification by the insurer without at least thirty (30) days' prior written notice to Lessor and Lessee. At all times hereunder, Lessee shall be responsible for delivery to Lessor of certificates showing the insurance policies required hereunder are in effect.

**11.3 Self Insurance.** Excluding the coverages identified in Section 11.1(a), Section 11.1(b), Section 11.1(h), and Section 11.1(i), which coverages must be maintained through one or more commercial insurance policies, Lessee may elect at any time during the Term of this Agreement not to carry insurance required under Section 11.1 (c)-(g) and to "self insure" against such risks provided that: (a) AHS has in effect a program of "self insurance" against such risks, which program complies with any and all applicable laws with respect to self insurance in the State; (b) the failure to carry such insurance does not violate any laws or any judgment, decree, injunction, permit, license, authorization or other requirement which is issued by any Governmental Authority with jurisdiction over the Hospital and Hospital Real Property or which is applicable to Lessee in the conduct of its business; (c) AHS is not in bankruptcy; (d) AHS retains biennially an actuarial consultant to examine and report on the adequacy of the funding of such self-

insurance and promptly provides a copy of each such report to Lessor; and (e) AHS complies with the recommendations of such actuarial consultant with respect to the funding of such self-insurance. For the purposes of this Section 11.3, "self-insure" shall mean that AHS or a Person that it controls is itself acting as though it were the insurance company providing the insurance required under the provisions hereof and AHS shall pay or cause to be paid any amounts due in lieu of insurance proceeds which would have been payable if the insurance policies had been carried, which amounts shall be treated as insurance proceeds for all purposes under this Agreement.

**11.4 Failure to Carry Insurance.** In the event Lessee shall at any time during the Term of this Agreement neglect or refuse to procure or maintain insurance coverages as herein required, Lessor may at its option and following at least thirty (30) days' prior notice to Lessee, except where a shorter period of notice is necessary to prevent any loss or forfeiture with respect thereto, procure and maintain such insurance and, at Lessor's election, Lessee shall be obligated to reimburse Lessor for all amounts expended in connection therewith within ten (10) days after Lessor's demand therefor.

**11.5 Involuntary Loss; Use of Insurance Proceeds; Condemnation Awards and Sale Proceeds.**

(a) If, during the Term of this Agreement, all or any part of the Hospital or Hospital Real Property shall be damaged or destroyed by whatever cause or shall be taken by any public authority or entity in the exercise of, or acquired under the threat or the exercise of, the power of eminent domain (for purposes hereof, an "Involuntary Loss" will refer to any involuntary loss and an "Involuntary Loss by Condemnation" will refer to any involuntary loss resulting from a taking of any public authority or entity in the exercise of, or acquired under the threat of the exercise of, the power of eminent domain), Lessee shall give prompt notice of such Involuntary Loss to Lessor. Other than an Involuntary Loss by Condemnation, if an Involuntary Loss requires the repair, rebuilding or restoration of all or part of the Hospital or Hospital Real Property, then in such event, within sixty (60) days after giving such notice to Lessor, Lessee shall provide to Lessor a report from Lessee's insurance adjuster (or other reputable professional possessing appropriate qualifications), which report shall identify (i) the expected costs associated with such repair, rebuilding or restoration of the affected part of the Hospital or Hospital Real Property; and (ii) the insurance or other proceeds available or to become available as a consequence of such Involuntary Loss to cover the costs identified in paragraph (i). Any deficiency between the amounts described in paragraph (i) and paragraph (ii) shall be referred to herein as the "Shortage." There shall be no abatement, reduction or recoupment in the Rental Payments as a result of any Involuntary Loss, unless grounds exist for Lessee to terminate this Agreement pursuant to Subsection (b) below and Lessee exercises its right to terminate this Agreement.

(b) If any Involuntary Loss is equal to or greater than 50% of the replacement value of the Hospital and Hospital Real Property subject thereto, Lessee may elect to terminate this Agreement; provided, however, that notice of such election is given by Lessee to Lessor within sixty (60) days after the date of the Involuntary Loss and/or the Involuntary Loss by Condemnation. If Lessee elects to terminate this Agreement, Lessee will be entitled to a refund of any and all pre-paid Rental Payments attributable to the rental period commencing with the date of the Involuntary Loss. If the Involuntary Loss is an Involuntary Loss by Condemnation, in the event Lessee elects to terminate this Agreement, Lessee will also be entitled to the portion of the condemnation award or proceeds attributable to the value of Lessee's leasehold interest

and any business damages. If the Involuntary Loss results from anything other than an Involuntary Loss by Condemnation, all insurance proceeds resulting from the Involuntary Loss shall be paid to Lessor except that insurance proceeds, attributable to business interruption or damages, shall be payable to Lessee.

(c) If Lessee does not elect to terminate this Agreement pursuant to Subsection (b) immediately above, Lessee shall be responsible for the prompt repair, rebuild or restoration of the portion of the Hospital or Hospital Real Property damaged, destroyed or taken with such changes, alterations and modifications (including, without limitation, the substitution and addition of other property) as may be desired by it. Lessee shall receive the insurance proceeds, condemnation awards or sale proceeds resulting from an Involuntary Loss, and upon such receipt Lessee shall promptly deposit such proceeds, condemnation awards or sale proceeds into the Loss Account (defined in Subsection (d) below).

(d) If Lessee does not elect to terminate this Agreement pursuant to Subsection (b) above, all insurance proceeds, condemnation awards or sale proceeds resulting from the Involuntary Loss shall be paid to Lessee and be placed in a separate account (the "Loss Account") and applied in one of the following ways, as agreed upon in writing by Lessor and Lessee:

(i) the repair, rebuilding, replacement or restoration of the Improvements, or the portion thereof damaged, destroyed or taken, to substantially the same condition as it was in prior to such Involuntary Loss (taking into consideration such changes, alterations and modifications as may be proposed by Lessor); or

(ii) the acquisition, by construction or otherwise, of other land or improvements, in Lessor's name, as may be mutually agreed to in writing by Lessor and Lessee, suitable for Lessee's operation of the Improvements (which land or improvements shall be deemed a part of the Hospital Real Property and available for use and occupancy by Lessee without the payment of any Rental Payments other than as herein provided, to the same extent as if such land or other improvements were specifically described herein and demised hereby); or

(iii) the acquisition or construction of other capital assets on or in the Hospital Real Property as may be mutually agreed to in writing by Lessor and Lessee.

Upon such agreement by Lessor and Lessee, Lessee shall perform its obligations under paragraph (i), (ii) or (iii) above, as agreed by Lessor and Lessee, and Lessee shall make disbursements from the Loss Account. Lessee shall be solely responsible for any and all costs incurred in connection with Lessee's election pursuant to paragraph (i), (ii) or (iii) above in excess of the Loss Account.

(e) Lessee and Lessor shall cooperate reasonably with one another in the handling and conduct of any prospective, pending or threatened condemnation proceedings or with respect to any settlement or negotiation proceedings involving coverage provided under any policy of insurance. However, in the event Lessee elects not to terminate this Agreement, Lessee shall have the final authority to negotiate and defend any such legal action.

(f) In the event that Lessor and Lessee do not agree as to appropriate use of the Loss Account, under Section 11.5(d), such Loss Account shall be the property of Lessee; provided,

however, that any such remaining balance in the Loss Account shall be used exclusively for purposes of reinvestment thereof in capital assets for the Hospital or Hospital Real Property.

(g) Nothing in this Agreement shall be construed as obligating Lessor in any way or to any extent to repair, restore or replace the Hospital or Hospital Real Property, or any part thereof, and Lessee expressly acknowledges and agrees that Lessee shall be responsible for any such repair, restoration or replacement at its sole cost, subject to application of the funds made available as provided in, and in accordance with, the provisions of this Section 11.5.

## **ARTICLE XII**

### **SURVIVAL OF REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION**

**12.1 Survival of Representations and Warranties.** All representations and warranties that each party hereto makes in this Agreement or in any certificate or schedule that such party delivers pursuant to this Agreement shall survive the execution of this Agreement and the Commencement Date. A claim may be asserted at any time subject to any applicable statutes of limitation or repose, for any misrepresentation as to, or any inaccuracy in Article IV, Article V, Article VI, or Article VII. Notwithstanding any investigation conducted before or after the Commencement Date or the decision of any party to this Agreement to consummate the transaction contemplated by this Agreement, each party hereto shall be entitled to rely and is hereby declared to have reasonably relied upon the representations, warranties, and covenants of the other parties to this Agreement.

**12.2 Indemnification by Lessor.** To the extent permitted by law, Lessor shall defend, indemnify and hold wholly harmless Lessee and AHS, and their respective directors, officers, managers, members, principals, attorneys, agents, employees and other representatives, successors and permitted assigns (collectively, the "Lessee Indemnified Persons"), from and against any and all losses, liabilities, damages, costs (including, without limitation, court costs and costs of appeal) and expenses (including, without limitation, reasonable attorneys' fees) (collectively, the "Damages"), that the Lessee Indemnified Persons incur as a result of, or with respect to:

(a) any material inaccuracy in or breach of any representation, warranty, covenant or agreement of Lessor contained in this Agreement; and

(b) any claim, cause of action, liability or obligation, of any nature whatsoever of Lessee to the extent directly relating to any act or omission of Lessor, or any of its agents, employees, or officers, occurring prior to the Commencement Time, including, without limitation, any claim or cause of action directly relating to any act of medical malpractice or battery, occurring prior to the Commencement Time.

**12.3 Indemnification by Lessee.** Lessee shall defend, indemnify hold wholly harmless Lessor and BFMCI and their respective directors, officers, managers, members, principals, attorneys, agents, employees and other representatives, successors and permitted assigns (collectively, the "Lessor Indemnified Persons"), from and against any and all Damages that the Lessor Indemnified Persons incur as a result of, or with respect to:

(a) any material inaccuracy in or breach of any material representation, warranty, covenant or agreement of Lessee contained in this Agreement; and

(b) any claim, cause of action, liability or obligation, of any nature whatsoever of Lessor to the extent directly relating to any act or omission of Lessee, or any of its agents, employees, or officers, occurring at or after the Commencement Time, including, without limitation, any claim or cause of action directly relating to any act of medical malpractice or battery, occurring at or after the Commencement Time.

**12.4 Indemnification by BFMCI.** BFMCI shall defend, indemnify and hold wholly harmless the Lessee Indemnified Persons from and against any and all Damages that the Lessee Indemnified Persons incur as a result of, or with respect to:

(a) any material inaccuracy in or breach of any representation, warranty, covenant or agreement of BFMCI contained in this Agreement; and

(b) any claim, cause of action, liability or obligation, of any nature whatsoever of Lessee to the extent directly relating to any act or omission of BFMCI occurring prior to the Commencement Time, including, without limitation, any claim or cause of action directly relating to any act of medical malpractice or battery, occurring prior to the Commencement Time.

**12.5 Indemnification by AHS.** AHS shall defend, indemnify hold wholly harmless the Lessor Indemnified Persons from and against any and all Damages that the Lessor Indemnified Persons incur as a result of, or with respect to any material inaccuracy in or breach of any material representation, warranty, covenant or agreement of AHS contained in this Agreement.

**12.6 Period of Indemnification.** Each of the foregoing provisions of this Article XII shall be severable from and independent of, and may be enforced without regard to, the enforcement of the other provisions of this Article XII or other provisions of this Agreement, and the provisions of this Article XII shall survive the expiration or termination of this Agreement with respect to acts or breaches occurring and obligations required to be performed prior to the expiration or termination of this Agreement; provided, however, that claims for indemnification under this Agreement must be asserted by the party claiming indemnification thereunder by giving notice to the party from which indemnification is sought with respect to such claim:

(a) prior to the expiration of the statute of limitations applicable to such claim; or

(b) to the extent permitted by Florida law, not later than one (1) year following the expiration or earlier termination of this Agreement; whichever first occurs.

**12.7 Direct and Third Party Claims.** The provisions of Article XII shall apply to direct and the enforcement of indemnification claims attributable to third party claims.

**12.8 Third Party Claims.** If the facts giving rise to any claim for indemnification hereunder shall involve any actual claim or demand by any third Person against a Lessor Indemnified Person or a Lessee Indemnified Person (which for purposes of this Section 12.8 are each referred to hereinafter as an “Indemnified Person”), the party obligated to provide the indemnification (the “Indemnifying Person”) and hold harmless the Indemnified Person shall be entitled to notice of and, without prejudice to the right of any Indemnified Person to participate at the Indemnifying Person’s own expense with counsel of the Indemnifying Person’s own choosing, to defend or prosecute such claim if the Indemnifying Person gives the Indemnified Person notice of the Indemnifying Person’s intention to do so no later than the time by which the interests of



the Indemnified Person would be materially prejudiced as a result of the Indemnified Person's not having received such notice; provided, however, that if the defendants in any proceeding shall consist of or include both the Indemnifying Person and the Indemnified Person and the Indemnified Person shall have reasonably concluded that counsel selected by the Indemnifying Person has a conflict of interest because of the availability of different or additional defenses to the Indemnified Person, or if the proceeding might result in equitable remedies against the Indemnified Person, the Indemnified Person shall have the right to select separate counsel to control the defense of such proceeding on the Indemnified Person's behalf, at the expense of the Indemnifying Person.

### **ARTICLE XIII**

#### **ASSIGNMENTS; SUBLEASES; OPERATING ARRANGEMENTS**

##### **13.1 Subleases and Operating Contracts.**

(a) Lessee may sublease any part, but not, individually or in the aggregate, all or substantially all, of the Hospital Real Property or contract for the performance by others of operations or services on or in connection with any part, but not all or substantially all, of the Hospital Real Property for any lawful purpose (in any such case, a "Sublease"), but only if: (i) each such Sublease is consistent with and subject to the provisions of this Agreement; (ii) Lessee shall remain fully obligated and responsible under this Agreement to the same extent as if such Sublease had not been executed; and (iii) such Sublease could not adversely affect Lessee's status as a Tax Exempt Organization, which shall be verified upon Lessor's request by a signed opinion of counsel for Lessee prior to such Sublease becoming effective (except that no opinion of counsel shall be necessary in connection with a Sublease for any "hospital-based" physician services related to the operation of the Hospital or for any other Sublease relating to other than the clinical services provided by the Hospital, such other Subleases including, without limitation, activities related to gift shop, doctors' office space, food service, electronic banking machines, parking and similar services).

(b) Notwithstanding Section 13.1(a), any Sublease that has a term that will not expire (or cannot be terminated unilaterally by Lessee) within two (2) years after the expiration of the Term of this Agreement (the "Excess Sublease Term") shall require Lessor's prior written consent and Lessee may not collect Sublease rents allocable to the Excess Sublease Term more than one (1) month in advance. Any Sublease that requires Lessor's prior written consent under this Section 13.1(b), shall require the subtenant to execute a non-disturbance and attornment agreement pursuant to which the subtenant confirms it is in direct privity of contract with Lessor and that all obligations owed to Lessee (as sublandlord) under the Sublease shall become obligations owed to Lessor for the Excess Sublease Term.

**13.2 Prohibition on Assignments; and Other Subleases.** Lessee shall not assign this Agreement or sublease any portion of the Hospital Real Property, whether voluntary, involuntary or by operation of law, without Lessor's prior written consent, which may be granted or withheld in Lessor's absolute discretion, except: (a) as described in Section 13.1, above; or (b) to a wholly controlled not-for-profit subsidiary of AHS; provided, however, that no assignment or subletting, whether with or without Lessor's consent, as permitted in this Article XIII, shall alter Lessee's liability, or release Lessee from Lessee's liability, to pay all Rental Payments and to perform all other obligations of Lessee under this Agreement.

**ARTICLE XIV**  
**DEFAULT; EARLY TERMINATION; TERMINATION UPON**  
**EXPIRATION OF LEASE; REMEDIES**

**14.1 Events of Default.** Each of the following shall constitute an Event of Default under this Agreement:

(a) if Lessee shall fail to pay, when due and payable, any Rental Payment described in Section 3.2(a) hereof;

(b) if Lessee shall file a voluntary petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent, or shall file any petition or other pleading seeking any reorganization, composition, readjustment, liquidation or similar relief for itself under any present or future law or regulation;

(c) if a petition or other pleading shall be filed against Lessee seeking an adjudication of bankruptcy, reorganization, composition, readjustment, liquidation or similar relief under any present or future law or regulation and shall remain undismissed or unstayed for sixty (60) days or if by an order or decree of a court of competent jurisdiction, Lessee shall be adjudicated a bankrupt or insolvent or relief shall be granted under or pursuant to any such petition or other pleading, or if by order or decree of such court, there shall be appointed without the consent or acquiescence of Lessee, a trustee in bankruptcy or reorganization or a receiver or liquidator of it or of all or any substantial part of its property or of the Hospital Real Property and any such order or decree shall have continued unvacated, or unstayed on appeal or otherwise and in effect for a period of thirty (30) days, or if Lessee or AHS shall be dissolved or liquidated;

(d) the abandonment by Lessee of the Hospital, or any substantial part thereof, and such abandonment shall continue for a period of fifteen (15) days or more (other than an abandonment permitted by Article XI (e.g., Involuntary Loss by Condemnation or Involuntary Loss permitting Lessee to terminate this Agreement));

(e) Lessee shall cease to be an organization exempt from federal income taxation under Section 501(a) of the Code as a charitable organization described in Section 501(c)(3) of the Code;

(f) any failure by Lessee to observe or perform in any material respect any covenant, condition or agreement in this Agreement on Lessee's part to be observed or performed, other than as specifically referred to above, which continues unremedied for a period of thirty (30) days after written notice (specifying such failure) has been given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided, however, that if such failure by Lessee is of the type that cannot be remedied within such thirty (30) day period and Lessee diligently pursues appropriate actions to remedy such failure, and there shall be no risk to Lessor of substantial economic loss or forfeiture, the agreement for an extension by Lessor shall not be unreasonably withheld, but in any event no such extension shall be for a period of more than sixty (60) days unless otherwise agreed to in writing by Lessor;

(g) any Change of Control of Lessee (for purposes of this Section 14.1(g), a "Change of Control" shall be deemed to have occurred if AHS (or a Tax Exempt Organization for which AHS is the sole member) is no longer the sole member of Lessee);

(h) any failure by Lessor to observe or perform in any material respect any covenant, condition or agreement in this Agreement on Lessor's part to be observed or performed, which continues unremedied for a period of thirty (30) days after written notice (specifying such failure) has been given to Lessor by Lessee, unless Lessee shall agree in writing to an extension of such time prior to its expiration; provided, however, that if such failure by Lessor is of the type that cannot be remedied within such thirty (30) day period and Lessor diligently pursues appropriate actions to remedy such failure, and there shall be no risk of substantial economic loss or forfeiture to Lessee, the agreement for an extension by Lessee shall not be unreasonably withheld but in any event no such extension shall be for a period of more than sixty (60) days unless otherwise agreed to in writing by Lessee in its sole and absolute discretion;

(i) an Event of Default of Lessor under the Healthcare Services Agreement between Lessor and Lessee (the "Services Agreement"), a copy of which is attached hereto as Exhibit E;

(j) a (i) termination of the Services Agreement by Lessor pursuant to Section 5.2(b) of the Services Agreement, or (ii) unilateral modification of the Services Agreement by Lessor pursuant to Section 6.8 if Lessee gives written notice to Lessor of its objection to the unilateral modification and Lessor fails to rescind the modification within thirty (30) days of receipt of the notice of objection from Lessee;

(k) failure of Lessor to execute a new Services Agreement (a "Successor Services Agreement") on the terms set forth in Section 3.2(a), provided, the Rental Value Notice provided by Lessor to Lessee included a written statement affirming Lessor's agreement to enter into a Successor Services Agreement (on the other hand, if the Rental Value Notice explicitly states that no Successor Services Agreement will be entered into, then in said event, said decision by Lessor not to enter into a Successor Services Agreement shall not constitute an Event of Default under this Agreement); or

(l) an Event of Default of Lessor pursuant to any Successor Services Agreement (if any) entered into between Lessor and Lessee; or

(m) a (i) termination of the Successor Services Agreement by Lessor, regardless of reason, or (ii) unilateral modification of the Successor Services Agreement by Lessor, if Lessee gives notice to Lessor of its objection to the unilateral modification of the Successor Services Agreement and Lessor fails to rescind the modification within thirty (30) days of receipt of the notice of objection from Lessee.

**14.2 Early Termination.** Upon the occurrence of any one or more of the Events of Default specified in Section 14.1 hereof, the non-defaulting party may give to the defaulting party written notice that this Agreement shall terminate upon a date specified in such notice, which date shall be not less than ninety (90) days after the date on which such written notice has been given.

**14.3 Damages.** Upon the termination of this Agreement by Lessor pursuant to Section 14.1 (a) through (g) hereof, Lessee shall be obligated to pay Damages to Lessor. Upon the termination of this Agreement by Lessee pursuant to Section 14.1 (h) through (k) hereof, Lessor shall be obligated to pay, and shall forthwith pay Damages to Lessee, and in addition, once Lessee has peacefully vacated and surrendered possession of the Hospital Real Property and all Improvements thereon, as required by Section 14.6, Lessee shall receive a return of the

unamortized portion of any prepaid Rental Payment for the Initial Term or the applicable Renewal Term, as the case may be, within one hundred eighty (180) days after such vacating and surrender. Such unamortized portion shall be determined by amortizing the prepaid Rental Payment for the Initial Term or the applicable Renewal Term, as the case may be, on a straight line basis over the period of the Initial Term or the applicable Renewal Term, as the case may be. NOTWITHSTANDING ANYTHING TO THE CONTRARY ELSEWHERE IN THIS AGREEMENT, NO PARTY TO THIS AGREEMENT SHALL, IN ANY EVENT, BE LIABLE TO ANY OTHER PARTY FOR PUNITIVE OR EXEMPLARY DAMAGES.

**14.4 Additional Remedies.** The rights and remedies specified in this Agreement of the party(ies) that did not commit the Event of Default shall be cumulative. The non-defaulting party(ies) shall have all of the rights and remedies now or hereafter conferred by law or in equity, including, without limitation, receivership and injunctions to restrain violations or attempted violations of any provisions of this Agreement. Lessee and Lessor also agree that an Event of Default under the terms of this Agreement shall entitle the non-defaulting party to specific performance of this Agreement.

**14.5 No Waiver of Rights.** No failure by a party to insist upon the strict performance of any term, covenant, condition or provision of this Agreement, or to exercise any right or remedy consequent upon an Event of Default hereunder, shall constitute a waiver of any such Event of Default or of such term, covenant, condition or provision or a waiver or relinquishment in the future of the right to insist upon and to enforce by any appropriate legal remedy a strict compliance with all the terms, covenants, conditions and provisions of this Agreement, or of the right to exercise any such rights or remedies, if any Event of Default by the defaulting party be continued or repeated. No term, covenant, condition or provision of this Agreement binding upon a party, and no breach hereof or default hereunder, shall be waived, altered or modified, except as set forth in a written instrument executed by the parties. No waiver of any breach shall affect or alter this Agreement but every term, covenant, condition and provision of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

**14.6 Effect of Early Termination; Termination Upon Expiration of Lease.** Upon the expiration or earlier termination of this Agreement, (a) Lessee shall peacefully vacate and surrender possession of the Hospital Real Property and all Improvements thereon, such Hospital Real Property and all Improvements thereon to be in proper working order upon surrender; and (b) Lessee shall cooperate with Lessor to effect a prompt and smooth transfer the operations of the Hospital and the Hospital Real Property to Lessor in accordance with Article XVI.

## **ARTICLE XV LEASE COMMENCEMENT; CONDITIONS**

**15.1 Commencement Date and Commencement Time.** The Commencement Date shall occur on the date of this Agreement after all conditions precedent set forth in Section 15.2 have been satisfied (the "Commencement Date") and, if the Commencement Date occurs, Lessee will be deemed to have received possession of the Hospital Real Property effective as of 12:00:01 a.m. on the Commencement Date (the "Commencement Time").

**15.2 Conditions.** The following shall be conditions precedent to the occurrence of the Commencement Date:

- (a) This Agreement shall have been signed by all parties hereto;
- (b) Lessor shall have received from Lessee a certificate of active status as to Lessee from the Florida Secretary of State;
- (c) Lessor and Lessee shall have each provided to or received from the other:
- (i) Certificates, signed by a senior executive officer, such as the chairman of the governing board, or president, confirming compliance with the terms hereof, no default (or event which with the passage of time would be a default) hereunder, no material adverse changes in the activities, properties, or finances of the party since October 1, 2015, and that the representations and warranties of the party contained in this Agreement remain true and correct;
- (ii) Certificates of Incumbency from the respective officer of Lessor and Lessee executing this Agreement, and any other agreements or instruments contemplated to be completed prior to the Commencement Date.
- (d) Receipt by Lessee of an acceptable title insurance commitment from an agent or underwriter selected by Lessee in the form attached as Exhibit B-1 that is based on a current search of the public records of Volusia County, Florida, of the title to the Hospital Real Property that confirms to Lessee's satisfaction Lessee's leasehold interest in the Hospital Real Property as provided in and contemplated by this Agreement, subject only to the Permitted Encumbrances and any other matters acceptable to Lessee.
- (e) Receipt by Lessor of evidence of Lessee's insurance coverages identified in Article XI.
- (f) Receipt within the time period established by the particular law, statute, or regulation of all federal, State and local licenses, approvals, consents, permits, certificates of need or exemption therefrom, necessary for Lessee to lease and operate the Hospital as a general acute care hospital.
- (g) The Asset Purchase Agreement, a form of which is attached as Exhibit A, shall have been signed by all parties thereto.
- (h) The Services Agreement, a form of which is attached as Exhibit E, shall have been signed by all parties thereto.
- (i) There shall not be any antitrust proceeding pending, threatened or, in the opinion of each party's antitrust counsel, likely that (i) challenges or seeks damages or other relief in connection with any of the transactions contemplated by this Agreement or (ii) may have the effect of preventing, delaying, making illegal or interfering with any of the transactions contemplated by this Agreement.
- (j) A Records Custodian Agreement, a form of which is attached as Exhibit F, shall have been signed by all parties thereto.
- (k) A Guaranty Agreement, a form of which is attached as Exhibit H, shall have been signed by AHS.

(l) A Transition Services Agreement, a form of which is attached as Exhibit I, shall have been signed by all parties thereto.

(m) The Rental Payment for the Initial Term identified in Section 3.2(a) shall have been received by Lessor.

(n) Termination of the Existing Lease Agreement, a form of which is attached as Exhibit G, shall have been signed by Lessor and BFMCI to be effective as of the Commencement Time.

(o) All exhibits and schedules to this Agreement shall have been approved in form and substance by the parties hereto.

(p) Certified copy of an Order of the Circuit Court of Volusia County releasing or otherwise removing the reverter held by the Foundation.

Understanding that in order to facilitate the Contemplated Transaction, it may be necessary for one or more documents to be executed by the parties prior to the Commencement Date, therefore, the parties expressly agree that all executed documents (including exhibits, schedules, etc.) will remain non-binding against the party executing such (nor may money remitted pursuant to said executed documents be retained by the receiving party) until and unless an authorized representative of each party has executed an "acknowledgement" attesting that the conditions contained in this Agreement, the Agreement to Release Deed Restrictions (Exhibit D) and the Asset Purchase Agreement (Exhibit A) have been met.

## ARTICLE XVI TRANSITION

**16.1 Hospital Real Property; Medical Records; Etc.** Upon expiration or earlier termination of this Agreement, Lessee shall deliver to Lessor possession of the Hospital Real Property including an assignment of the Permits to the degree assignable and the medical records then in its possession (or shall otherwise host the storage of all medical records related to the operation of the Hospital and will provide Lessor direct access to the medical records in accordance with the Transition Plan (as defined below)). Lessee will reasonably cooperate with Lessor to assist in the transfer of all applicable licenses, permits and certificates of need required by the Lessor to operate the Hospital and Hospital Real Property for its own account.

**16.2 Contracts.** Upon the expiration or earlier termination of this Agreement, Lessee shall set forth in schedule format a list of all Contracts (including a copy of each) to which Lessee is a party that pertain to the Hospital and/or its operations (including the Community Health Clinic), excluding AHS system-wide/national contracts (the "Lessee Contracts"). Lessor shall identify, among the Lessee Contracts listed, those contracts that it desires to assume (the "Lessor Assumed Contracts"). Anything contained herein to the contrary notwithstanding, the provisions of this Section 16.2 shall not constitute an agreement by Lessee to assign any Lessee Contract if an attempted assignment thereof without the consent of another party thereto would constitute a breach of said Lessee Contract. Any Lessee Contract for which consent is required from a third party which third party withholds its consent also shall not be deemed a Lessor Assumed Contract. If Lessee discovers at any time that any Contract that exists is not listed on the Lessee Contract schedule provided to Lessor (a "Lessee Omitted Contract"), Lessee shall promptly give

notice to Lessor of such fact and provide Lessor with an accurate and complete copy of the Lessee Omitted Contract. Lessor may, in its sole discretion, elect to treat or not treat any Lessee Omitted Contract as a Lessor Assumed Contract; provided, however, if the unexpired term of the Lessee Omitted Contract has a then value of \$20,000.00 or less, and the terms of the Lessee Omitted Contract otherwise comply with state and federal law and will not, as written, conflict with any Contract or obligation to which Lessor is then subject, Lessor agrees that it will assume the Lessee Omitted Contract. The obligation of Lessor to assume any Lessee Omitted Contract will be capped at \$100,000 (i.e., once the value of all Lessee Omitted Contracts assumed by Lessor equals \$100,000, Lessor shall have no further obligation to assume any Lessee Omitted Contract. The assumption by Lessor of any Lessee Omitted Contract pursuant to the provisions of Section 16.2 shall be memorialized in writing and signed by Lessor, after which the Lessee Omitted Contract shall be treated as a Lessor Assumed Contract.

**16.3 Liabilities.** Upon the expiration or earlier termination of this Agreement, Lessor will not assume or become responsible for any liabilities of Lessee (whether direct or indirect, primary or secondary, accrued or unaccrued, absolute or contingent) and Lessee shall indemnify and hold harmless Lessor with respect to all of such liabilities.

**16.4 Employment.** Upon the expiration or earlier termination of this Agreement, Lessor shall have the right to offer employment to each of the W-2 employees of Lessee (or AHS or a wholly owned/controlled affiliate of AHS) then employed to provide services primarily on behalf of the Hospital.

**16.5 Capital Improvements to Hospital Real Property; Major Moveable Equipment Item.**

(a) Upon the expiration or earlier termination of this Agreement, Lessor shall be obligated to repurchase any capital improvements made by Lessee to the Hospital Real Property during the Term of this Agreement, and the purchase price of such capital improvements shall be their depreciated net book value as of the expiration/termination date. The calculation of the amount to be paid by Lessor pursuant to this Section 16.5 will be based upon the financial records of Lessee for the applicable period, which financial records will be prepared in accordance with GAAP (or its successor standard, if applicable) as consistently applied by Lessee. In the absence of manifest error, the information in such financial records will be presumed to be correct and binding on Lessor and Lessee. In addition, upon the expiration or earlier termination of this Agreement, Lessor shall be obligated to repurchase any item of capital equipment having a depreciated net book value (as of the termination/expiration date) in excess of \$ 0 (a "Major Moveable Equipment Item").

(b) At least one hundred fifty (150) days prior to the expiration or termination of the Term, Lessee will prepare and deliver to Lessor written notice of the proposed amount of the purchase price. Within ninety (90) days after receipt of such notice, Lessor will deliver its written objections thereto (if any) to Lessee. If Lessor fails to deliver any such objections within such ninety (90) day period, then the amount of Lessee's proposed purchase price will be final and binding upon the parties for all purposes. If Lessor so delivers any such objections and they are not promptly resolved by mutual written agreement, then Lessor and Lessee will each have the right to require that such disputed determination be submitted to an independent accountant jointly selected by Lessee and Lessor, for a determination of such purchase price. The determination of the independent accountant of such purchase price, which will be delivered within thirty (30) days after submission to such firm, will be final and binding upon the parties.

(c) If there are any amounts due and payable by Lessee to Lessor pursuant to this Agreement at the time this Agreement expires or is terminated, then such amount shall be deducted from the purchase price paid to Lessee.

**16.6 Supplies; Minor Equipment; and Inventory.** Lessor shall have the right, but not the obligation, to purchase the supplies, non-Major Moveable Equipment Items, and inventory owned by Lessee and that are located on or in the Hospital Real Property at the depreciated net book value as of the expiration date or early termination date of this Agreement. The calculation of the amount to be paid by Lessor pursuant to this **Section 16.6** will be based upon the financial records of Lessee for the applicable period, which financial records will be prepared in accordance with GAAP (or its successor standard, if applicable) as consistently applied by Lessee. In the absence of manifest error, the information in such financial records will be presumed to be correct and binding on the parties.

**16.7 Joint Venture Interests.** Upon the expiration or earlier termination of this Agreement, Lessor shall identify, among all joint venture interests, if any, between Lessee and a third party (excluding AHS or any AHS subsidiary in which AHS, directly or indirectly, owns 100% of the stock or 100% of the membership interests) relating to the Hospital Real Property or the Hospital, those joint venture interests, if any, that Lessor desires to acquire. Lessee will transfer to Lessor at net fair market value (as determined by an appraiser, mutually selected by the parties), Lessee's interest in such joint venture requested by Lessor to the extent permissible under the terms of the governing agreements for each joint venture entity. Lessee shall use its commercially reasonable efforts to obtain any consents required to transfer the joint venture interests, whether by contract, law or otherwise.

**16.8 Transition Plan.** During the one hundred eighty (180) day period prior to the expiration of the Term of this Agreement, Lessor and Lessee shall develop and implement a plan (the "**Transition Plan**") to transition the operations conducted by Lessee at the Hospital and/or on the Hospital Real Property at the end of the Term of this Agreement to Lessor or its designee in a manner that maintains compliance during such transition with the operating covenants of this Agreement and applicable laws, which Transition Plan shall, among other items agreed to in writing by the parties: (a) provide that any and all liens, encumbrances, security interests or charges on the Hospital Real Property or Lessee's leasehold estate under this Agreement in respect to the Hospital Real Property created by, through or under Lessee shall be extinguished or otherwise removed prior to the conclusion of the Term of this Agreement; (b) provide for the continuation of the operations conducted by Lessee at the Hospital upon transition, including the transition of applicable Permits and approvals from Governmental Authorities associated with such operations to Lessor or its designee; and (c) provide for Lessor's designation of a Person to facilitate implementation of the Transition Plan, which Person shall be afforded such access and informational resources necessary to oversee diligent completion of the Transition Plan. In the event this Agreement terminates for whatever reason prior to the expiration of the Term, the parties agree to cooperate with one another in the transition of the operations of the Hospital and possession of the Hospital Real Property from Lessee to Lessor (or its designee); provided, however, in no event shall Lessee be obligated to remain in possession of the Hospital Real Property after termination of this Agreement for a period in excess of one hundred-eighty (180) days or on the date on which Lessor (or its designee) receives confirmation that its licensure application to operate the Hospital has been approved by the Agency for Health Care Administration (or its successor), whichever occurs first (the "**Transition Period**"). During the Transition Period, Lessee shall remit each month's rent in an amount equal to rent paid during



the month immediately preceding the month in which termination or expiration of this Agreement occurred. To illustrate, if the Agreement terminates or expires during the last month of the Initial Term, then for each month of the Transition Period, Lessee shall remit 1/300 of the rent paid during the Initial Term.

**16.9 Cooperation; Documents.** The parties agree to execute and deliver such other agreements and instruments in connection with the transactions described in this Article XVI as may be deemed reasonable and customary.

**16.10 Holding Over.** In the event Lessee remains in possession of any part of the Hospital Real Property after expiration of the Term, termination of this Agreement, or expiration of the Transition Period, such holding over on the part of Lessee will not, of itself, renew or extend the Term of this Agreement, and Lessee will be deemed to be a tenant at sufferance with a month to month tenancy, subject to all of the provisions of this Agreement and Florida law; provided, however, Lessee shall be liable for all costs and expenses incurred by Lessor in connection with the holding over including attorneys' fees and costs, together with an additional fair rental value payment for each month in which Lessee continues to occupy the Hospital Real Property.

## **ARTICLE XVII**

### **AFFIRMATION OF COMPLIANCE WITH CONDITIONS OF F.S. 155.40(23)(a)**

Lessor and BFMCI agree as follows as to the Existing Lease and the relationship sought to be established by this Agreement:

**17.1 Effective Date of Prior Lease.** All of the Hospital Real Property that is the subject of this Agreement is subject to the Existing Lease, which Existing Lease commenced (including any "reactivation") prior to April 6, 2012, the effective date of Chapter 2012-66, Laws of Florida.

**17.2 Termination of the Existing Lease.** The Existing Lease will be terminated as of the Commencement Time as a direct result of a new lease, this Agreement, being entered into between Lessor and Lessee and the Commencement Date having occurred.

**17.3 Appropriate Party.** Lessor and BFMCI mutually agree that Lessee is an appropriate party to enter into this Agreement with Lessor for the Hospital Real Property, and Lessor and BFMCI each has approved the terms of this Agreement.

## **ARTICLE XVIII ADVENTIST TENETS**

Lessee at all times during the Term of this Agreement shall have the right to operate the Hospital as an institution that supports the health ministry of the Seventh-day Adventist Church, as explained more fully in the document attached to this Agreement as Schedule 18 (the "Adventist Tenets"), and incorporated herein by this reference.

## ARTICLE XIX MISCELLANEOUS

**19.1 Covenants Considered Material.** All covenants made by Lessor and Lessee contained herein shall be considered to be material to this Agreement and the relationship between Lessor and Lessee.

**19.2 Governing Law and Venue.** This Agreement shall be governed and construed in accordance with the laws of the State of Florida without regard to its principles of conflicts of laws that would result in the application of the laws of any other jurisdiction. ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY WILL BE INSTITUTED SOLELY IN THE COURTS OF THE STATE OF FLORIDA LOCATED IN VOLUSIA COUNTY, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING IN SUCH COURT AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE CONTEMPLATED TRANSACTION.

**19.3 Multiple Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original agreement, but all of which together shall constitute one and the same instrument.

**19.4 Severability.** If any one or more of the provisions of this Agreement shall be determined by a court of competent jurisdiction to be invalid, the invalidity of any such provision or provisions shall in no way affect the validity or effectiveness of the remainder of this Agreement, and, subject to Section 19.17 of this Agreement, shall continue in force to the fullest extent permitted by law, but only so long as no material benefit to either of the parties would be adversely affected thereby and no burden on either of the parties would be substantially increased thereby.

**19.5 Recording.** The parties will execute a short form Memorandum of Lease in recordable form which Lessee will record in the Office of the Clerk of Volusia County, a form of which is attached hereto as Exhibit J. In addition to the short form Memorandum of Lease contemplated by this Section 19.5, Lessee shall execute and deliver to Lessor an instrument in recordable form terminating Lessee's interest in the Hospital Real Property, which instrument may be recorded by Lessor at the expiration or earlier termination of the Term of this Agreement.

**19.6 Notices; Demands; Requests.** All notices or other communications required or permitted hereunder shall be in writing, shall be delivered personally, delivered by a recognized courier service or sent by certified or registered mail, return receipt requested, postage prepaid, in any such case as follows:

As to Lessor:

Southeast Volusia Hospital District  
401 Palmetto Street  
New Smyrna Beach, FL 32168  
Attention: Chairman, Board of Commissioners

With a copy to: (which shall not constitute notice)

Carlton Fields Jordan Burt, P.A.  
P.O. Box 3239  
Tampa, Florida 33601  
Attention: James J. Kennedy, III

(if by mail)

-or-

4221 West Boy Scout Boulevard  
Suite 1000  
Tampa, Florida 33607  
Attention: James J. Kennedy, III

(if other than by mail)

As to Lessee:

Adventist Health System/Sunbelt, Inc.  
401 Palmetto Street  
New Smyrna Beach, FL 32168  
Attention: President

With a copy to: (which shall not constitute notice)

Legal Services  
Adventist Health System  
900 Hope Way  
Altamonte Springs, FL 32714  
ATTN: Chief Legal Officer

-and-

Business Development  
Adventist Health System  
900 Hope Way  
Altamonte Springs, FL 32714  
ATTN: Senior Vice President

-and-

Adventist Health System East Florida Region  
c/o Florida Hospital Fish Memorial  
1055 Saxon Boulevard  
Orange City, FL 32763  
Attention: President, East Florida Region

or to such other address, and to the attention of such other individual or officer as any party may designate by notice given in accordance with this Section 19.6. Notice shall be deemed to have been given and received when delivered personally or by recognized courier, or on the fifth day after such notice has been mailed, in accordance with this Section 19.6.

**19.7 No Personal Liability.** Notwithstanding anything to the contrary contained herein or in any other instrument or document executed by or on behalf of Lessor, BFMCI, Lessee or AHS in connection herewith, no stipulation, covenant, agreement or obligation contained herein or therein shall be deemed or construed to be a stipulation, covenant, agreement or obligation of any present or future member, director, commissioner, trustee, officer, employee or agent of Lessor or Lessee or any of his or her heirs, successors or assigns, in his or her individual capacity, and no such individual, in his or her individual capacity, shall be liable personally for a breach or nonobservance of or for any failure to perform, fulfill or comply with any such stipulations, covenants, agreements or obligations, nor shall any recourse be had against such individual for the payment of any of the Rental Payments due hereunder or for any claim based thereon or on any such stipulation, covenant, agreement or obligation against any such individual, in his or her individual capacity.

**19.8 Payments.** All payments to be made under Section 3.2(a) by Lessee shall be made in immediately available funds (by wire transfer or otherwise) on or before the day on which such payments are due.

**19.9 Survival of Covenants, Representations and Warranties.** All covenants, agreements, representations and warranties set forth herein shall survive the execution of this Agreement and the Commencement Date.

**19.10 Entire Agreement; No Third-Party Beneficiary.** This Agreement together with the exhibits and schedules attached hereto contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all other agreements and undertakings, representations or warranties, oral or written, between the parties with respect to their subject matters. This Agreement shall not, and is not intended to, confer any rights or remedies upon any person or entity, other than the parties hereto, and their respective successors and permitted assigns.

**19.11 Good Faith.** Good faith is the essence of this Agreement. Lessor and Lessee shall each exercise good faith and commercial reasonableness in the interpretation, performance and enforcement of this Agreement, except as may be set forth to the contrary herein.

**19.12 Relationship of Parties.** Nothing contained in this Agreement shall be construed or deemed by the parties hereto or by any third party to create a relationship or partnership or of joint venture or of any association whatsoever between Lessor and Lessee.

**19.13 Attorney's Fees and Costs.** If any legal action is brought by a party hereto to enforce the provisions of this Agreement, the prevailing party in such action shall be entitled to receive its court costs, all reasonable costs incurred in enforcing its rights under this Agreement (including, without limitation, copying costs, long distance telephone charges, and court reporter costs and fees) and reasonable attorneys' fees incurred by the prevailing party, whether out of court, in the trial court on appeal or in bankruptcy proceedings.

**19.14 Time is of the Essence.** Time is of the essence in the performance by each party of its obligations hereunder.

**19.15 Inspection of Books and Records.**

(a) Upon the written request of the Secretary of Health and Human Services or the Comptroller General, or any of their duly authorized representatives, Lessee shall make available to the Secretary the contracts, books, documents and records that are necessary to verify the nature and extent of the cost of providing any services contemplated hereunder. Such inspection shall be available up to four (4) years, or any longer period required by law, after the rendering of such services.

(b) Until the expiration of four (4) years, or any longer period required by law, after the furnishing of any services hereunder and in the event the services provided by the parties hereunder are valued at Ten Thousand Dollars (\$10,000) or more during any twelve (12) month period, or any longer period required by law, the parties shall make available upon written request of the Secretary of the United States Department of Health and Human Services or upon the written request of the United States Comptroller General, or any of their duly authorized representatives, all contracts, books, documents or records that are necessary to certify the nature and extent of any and all charges, costs and payments made or received hereunder.

(c) Each party or its designated representative is granted access at any reasonable time, upon reasonable conditions and notice, to the books and records of the other party insofar as necessary to verify or review accounting records for the purpose of determining compliance with the terms and provisions of this Agreement. The parties agree that any communications that are covered by an attorney-client, accountant-client, work product doctrine or other similar legal privilege or doctrine shall not be subject to the access requirements of this Subsection.

**19.16 Radon Gas.** In accordance with the requirements of Florida Statutes Section 404.056(5), the following notice is hereby given:

**RADON GAS:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your

county public health department.

**19.17 Successors and Assigns; and Restrictions on Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and the successors and permitted assigns of the parties; provided, however, that none of the rights or obligations of a party hereunder may be assigned or delegated without the prior written consent of the other parties, other than an assignment by Adventist to another Tax Exempt Organization of which 100% of the membership interests are held by.AHS.

**19.18 Adverse Governmental Action.** Should any federal or state statute, rule or regulation now existing, enacted or promulgated after the effective date of this Agreement, or interpreted by any Governmental Authority having jurisdiction over the parties, including, without limitation, any order, decision or declaratory statement so as to, in the opinion of a party's outside legal counsel that is experienced in healthcare law: (a) cause this Agreement or any provision of this Agreement to be unlawful; or (b) materially and adversely affect the ability of a party to lawfully perform any provision of this Agreement (each, an "Adverse Governmental Action"), then, within fourteen (14) days following written notice by such outside counsel to the other party of such Adverse Governmental Action, the parties shall meet to negotiate in good faith an amendment to this Agreement which will carry out the original intention of the parties to the extent possible in light of the Adverse Governmental Action. Any such amendment shall preserve, to the fullest extent possible, the underlying economic and financial arrangements between the parties hereto. In the event that, despite good faith attempts, the parties do not reach agreement upon an amendment within sixty (60) days after commencing negotiation, then this Agreement may be terminated by either party without any further obligation of a party to another, except that Lessee shall return possession of the Hospital Real Property to Lessor and, once Lessee has peacefully vacated and surrendered possession of the Hospital Real Property and all Improvements thereon, as required by Section 14.6, Lessee shall be entitled to a return of the unamortized portion of any prepaid Rental Payment for the Initial Term or the applicable Renewal Term, as the case may be, within ninety (90) days after Lessee has peacefully vacated and surrendered possession of the Hospital Real Property to Lessor, amortized on a straight line basis over the term then in progress. The determination as to whether an Adverse Governmental Action has occurred may be by written opinion from a party's outside legal counsel addressed to both parties.

**19.19 Amendment of Agreement.** This Agreement may be amended, supplemented or modified at any time by a written instrument duly executed by Lessor and Lessee and by AHS or BFMCI to the extent the amendment seeks to bind AHS or BFMCI.

**19.20 Waiver of Terms.** Any of the terms or conditions of this Agreement may be waived at any time by the party which is entitled to the benefit thereof, but only by a writing that has been signed by the party waiving such terms or conditions. The waiver of any term or condition shall not be construed as a waiver of any other term or condition of this Agreement.

**19.21 No Inferences.** Inasmuch as this Agreement is the result of negotiations between sophisticated parties of equal bargaining power represented by counsel, no inference in favor of, or against, any party shall be drawn from the fact that any portion of this Agreement has been drafted by or on behalf of such party.

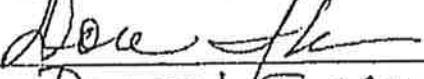
**19.22 Construction of Terms; Other Defined Terms.** As used in this Agreement, unless the context clearly indicates otherwise, the terms “hereunder,” “herein” and “hereof” shall refer to this Agreement as a whole, and the word “including” when not immediately followed by “without limitation” or “but not limited to” shall nevertheless mean “including, without limitation”. Other Definitions used in this Agreement are set forth below:

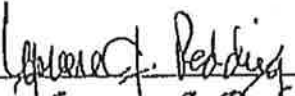
Damages	Section 12.2 & 14.3
Event of Default	Section 14.1
Execution Date	Preamble
Government Programs	Section 7.7
Indemnified Person	Section 12.8
Indemnifying Person	Section 12.8
Involuntary Loss by Condemnation	Section 11.5(a)
Lessee Contracts	Section 16.2
Lessee Indemnified Persons	Section 12.2
Lessee Omitted Contract	Section 16.2
Lessor Assumed Contract	Section 16.2
Lessor Indemnified Persons	Section 12.3
Lessor Records	Section 3.9
Major Moveable Equipment Item	Section 16.5(a)
Medicaid	Section 7.7
Provider Numbers	Section 7.7
Successor Services Agreement	Sections 3.2(a), 14.1(k)
Transfer Date	Section 9.1
Transition Period	Section 16.8

**[Signature Pages Follow]**


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed effective on the date and year first above written.

Signed, sealed and delivered in the presence of: LESSOR:

  
Name: DOREEN ICARDI


  
Name: Lynore J. Redding

**SOUTHEAST VOLUSIA HOSPITAL DISTRICT**, an independent special tax district of the State of Florida

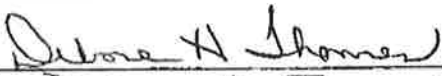
By:   
Name: HAROLD "DERWIN" SMOTHERS  
Title: Chairman of the Board


LESSEE:

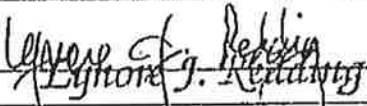
~~Pat Haddaway~~  
Name: PAT HADDAWAY

  
Name: MRS RODRIGUEZ


**SOUTHEAST VOLUSIA HEALTHCARE CORPORATION**, a Florida not-for-profit corporation


By:   
Name: Debora H. Thomas  
Title: Treasurer

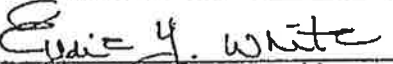
  
Name: DOREEN ICARDI

  
Name: Lynore J. Redding


**BERT FISH MEDICAL CENTER, INC.**, a Florida not-for-profit corporation

By:   
Name: HAROLD "DERWIN" SMOTHERS  
Title: Chairman of the Board

  
Name: TAMAR L. TRIMBLE

  
Name: Cydia Y. White

**ADVENTIST HEALTH SYSTEM SUNBELT HEALTHCARE CORPORATION**, a Florida not-for-profit corporation

By:   
Name: MICHAEL D. SAUNDERS  
Title: ASSISTANT SECRETARY

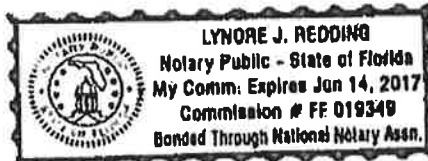


STATE OF FLORIDA

COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of March, 2016, HAROLD "DERWIN" SMOTHERS as Chairman of the Board of Southeast Volusia Hospital District, an independent special tax district of the State of Florida, on behalf of the independent special tax district. He ~~is personally known to me or~~ has produced FLORIDA DRIVER LICENSE as identification.

Lynore J. Redding  
(Signature of person taking acknowledgment)



Name typed, printed or stamped:

Title or rank:

Serial number, if any:

STATE OF FLORIDA

COUNTY OF Volusia

The foregoing instrument was acknowledged before me this 1 day of April 2016, Deborah H. Thomas as Treasurer of Southeast Volusia Healthcare Corporation, a Florida not-for-profit corporation, on behalf of the corporation. He/she is personally known to me or has produced Drivers License as identification.

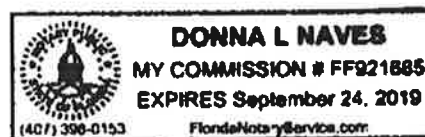
Donna L. Naves

(Signature of person taking acknowledgment)

Name typed, printed or stamped: Donna L. Naves

Title or rank: Notary

Serial number, if any: FF921685



STATE OF FLORIDA

COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of March, 2016, HAROLD "DERWIN" SMOTHERS as Chairman of the Board of Bert Fish Medical Center, Inc., a Florida not-for-profit corporation, on behalf of the not-for-profit corporation. He ~~is~~ personally known to me or has produced FLORIDA DRIVER LICENSE as identification.

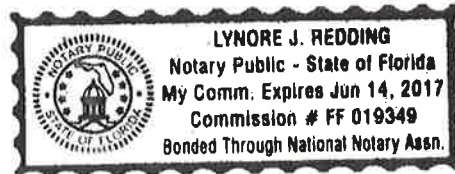
Lynore J. Redding

(Signature of person taking acknowledgment)

Name typed, printed or stamped:

Title or rank:

Serial number, if any:



STATE OF FLORIDA

COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me this 1 day of April 2016, Michael E. Saunders, as Assistant Sec. of Adventist Health System Sunbelt Healthcare Corporation., a Florida not-for-profit corporation, on behalf of the not-for-profit corporation. He/she is personally known to me or has produced (personally known) as identification.

Sarah Sneath

(Signature of person taking acknowledgment)

Name typed, printed or stamped: Sarah Sneath

Title or rank: Notary

Serial number, if any:

