

## **Board of County Commissioners Agenda Request**

**Date of Meeting:** February 18, 2020

**Date Submitted:** February 11, 2020

**To:** Honorable Chairman and Members of the Board

**From:** Wesley Hall, County Administrator  
Michael Glazer, Assistant County Attorney

**Subject:** Lease Between Gadsden County and Capital Regional Medical Center and Related Agreements

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### **Statement of Issue:**

This agenda item seeks decisions regarding an Amended Lease between Gadsden County and Capital Regional Medical Center (“CRMC”) regarding the existing hospital. A decision is also sought regarding the proposed Indigent Care Payment Agreement and Transportation Service Agreement.

### **Background:**

The Initial Term of the Lease between Gadsden County and CRMC for the hospital space will end on June 30, 2020. The deadline for the County to provide notice of nonrenewal is February 29, 2020. Multiple meetings and workshops have been held with the Board of County Commissioners, the board of Gadsden Hospital, Inc. (“GHI”) and, on some occasions, CRMC. There have been multiple drafts of an Amended Lease with the first one circulated on April 3, 2019. Negotiations with CRMC commenced prior to that date and have been ongoing since. The most recent joint meeting was held on January 23, 2020. As a result of that most recent meeting, additional changes have been made to the draft Amended Lease to further clarify the desire of the parties to continue to examine the need for inpatient services and also to clarify that if the County retakes possession of the hospital license, the County will have the option but not the obligation to purchase the hospital equipment. Some of the other key differences between the original Lease and the draft Amended Lease include:

- Rent payments by CRMC to the County will increase from \$12,000 per year to \$200,000 per year with 5% increases every three years.
- The new initial term would be 15 years.
- CRMC will take over all equipment responsibility including the replacement of current equipment, much of which is at the end of its useful life and would otherwise have to be replaced at significant expense to the County.
- CRMC will assume landscaping and ground maintenance for the facility.

Other changes have been summarized in prior communications.

As part of these negotiations, portions of the original Lease relating to payment of a portion of the half-cent sales tax to CRMC have been moved to a separate Indigent Care Payment Agreement. In addition, CRMC is willing to accept a significantly smaller portion of the sales tax compared to current amounts.

Also, as part of these negotiations, provisions in the original Lease relating to payment by CRMC to Gadsden EMS for certain categories of ambulance transports have been moved to a separate Transportation Service Agreement. In general, the new Transportation Service Agreement increases the number of categories for which CRMC will make payment and also increases, in most cases, the amount to be paid as compared to current rates.

**Fiscal Impact:**

The rent payment increase in the Amended Lease will result in additional revenue to the County of \$188,000 in the first year. Shifting the responsibility for replacing equipment to CRMC instead of the County will save the County hundreds of thousands of dollars that would otherwise need to be spent in the near future.

The revisions in the Indigent Care Payment Agreement reduce the half-cent sales tax proceeds paid to CRMC to a maximum of \$200,000 per year. According to information from the Gadsden County Clerk, if this new Agreement had been in place for the year ending in August 2019, the County would have saved approximately \$645,000 that was otherwise paid to CRMC. Going forward, if this Indigent Care Payment Agreement is approved as part of this package, the County will be able to keep similar amounts (and possibly more depending on tax collections).

The proposed Transportation Service Agreement will increase revenue to Gadsden EMS although the precise amount cannot easily be estimated.

**Options:**

1. Adopt the Amended Lease, the Indigent Care Payment Agreement and the Transportation Service Agreement and authorize the Chairman to sign.
2. Don't adopt the Amended Lease, the Indigent Care Payment Agreement and the Transportation Service Agreement.
3. Board direction.

**Attachments:**

1. Draft of the Amended Lease (this version is the Redline version of the November 18, 2019 Clean from Redline Draft)
2. Draft of the Amended Lease (this version is the Clean version from the November 18, 2019 Redline Draft)
3. Draft of the Indigent Care Payment Agreement
4. Draft of the Transportation Service Agreement

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GADSDEN COUNTY, FLORIDA

and

TALLAHASSEE MEDICAL CENTER, INC. d/b/a CAPITAL REGIONAL MEDIAL CENTER

**AMENDED AND RESTATED LEASE AGREEMENT**

Relating to Capital Regional Medical Center-Gadsden Memorial Campus

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## LEASE AGREEMENT

This Amended and Restated Lease Agreement ("Amended Lease") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2020, by and among TALLAHASSEE MEDICAL CENTER, INC. d/b/a CAPITAL REGIONAL MEDICAL CENTER, a Florida for profit corporation (referred to as the "Company") and GADSDEN COUNTY, FLORIDA, a political subdivision of the State of Florida (referred to as the "County").

### Recitals

WHEREAS, in August of 2008 Gadsden County voters approved a countywide one-half cent indigent care surtax for healthcare services, including but not limited to reopening Gadsden Community Hospital, primary care, preventive care, and inpatient care, and funding a healthcare program to provide healthcare services to eligible indigent and medically poor Gadsden residents by incorporating innovative healthcare and education services for the benefit of the public; and

WHEREAS, in furtherance of the implementation of the referendum, in March 2010, the County, the Company and Gadsden Hospital, Inc. ("GHI") entered into a Lease Agreement for a hospital facility now known as Capital Regional Medical Center-Gadsden Memorial Campus located at 23186 Blue Star Highway, Quincy, Florida 32353 (the "Hospital") (which Lease Agreement is hereafter referred to as "the Initial Lease"); and,

WHEREAS, the Company has four (4) licensed inpatient acute care beds at the Hospital in a non-operational status and County has expressed its desire to operate those beds and offer inpatient services at the Hospital; and

WHEREAS, the County, the Company and GHI entered into First, Second, Third, Fourth, Fifth, Sixth and Seventh Amendments to the Initial Lease on or about March 1, 2013, December 1, 2013, February 15, 2016, July 16, 2019, August 13, 2019, October 15, 2019 and December 31, 2019 respectively; and,

WHEREAS, the initial term of the Initial Lease will end in June 2020; and,

WHEREAS, it is no longer necessary for GHI to remain a Party to the Initial Lease or this Amended and Restated Lease Agreement; and

WHEREAS, GHI has consented to the removal of GHI as a Party to the Initial Lease and this Amended and Restated Lease Agreement; and

WHEREAS, the County and the Company desire to continue the relationship between the parties under this Amended and Restated Lease Agreement (hereafter referred to as "the Amended Lease"); and

WHEREAS, Company is a Florida corporation, and the operator and license holder of Capital Regional Medical Center (“CRMC”), located at 2626 Capital Medical Boulevard, Tallahassee, Florida, with 266 licensed beds; and,

WHEREAS, the County continues to have the authority and desires to continue to lease the Hospital and the “Leased Premises” as hereinafter defined, to Company, on the terms and conditions herein set forth and Company desires to continue to lease said Leased Premises, on the terms and conditions herein set forth; and,

WHEREAS, this Amended Lease shall replace and supersede the Initial Lease including the subsequent amendments without any interruption in the relationship between the Parties or the operation of the Hospital;

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and agreements herein, the Company and the County do hereby covenant and agree as follows:

## **ARTICLE I. Definitions**

*Section 1.1 Definitions.* The following terms are defined terms under this Amended Lease and shall have the following meanings given to them, unless the context and use clearly indicates a different intent and meaning:

“*Added Assets*” means any properties, ~~fixed equipment, moveable equipment, Replacement Equipment,~~ real property and improvements and renovations, Capital Expenditures, inventories and other assets developed, contributed, constructed, purchased, owned, operated or leased by Company or any other Affiliate of Company, or any interest held by Company, any other Affiliate of Company in any other entity, business, assets or property developed, purchased, contributed, owned, operated or leased, in and for the exclusive use by Company, in service of, in support of and/or in connection with the operations of the Hospital, other than the assets owned by County prior to the Commencement Date of the Initial Lease or thereafter purchased or acquired by County and used in the operation of the Hospital, including County Equipment. However, Added Assets shall include only those assets dedicated to use solely in the operation of Hospital, and shall exclude any assets owned or acquired by Company that are shared or utilized by Company or its Affiliates in the operation of other hospitals or health care facilities; including, but not limited to, computers, software, billing, records, etc., in support of multiple business operations.

“*Affiliate*” means, with respect to any Person (the “first Person”), each other Person who is, directly or indirectly, controlled by, in control of, or under common control with such first Person. Control of a Person means the power to direct the affairs of such Person by reason of ownership of voting stock, contract, or otherwise.

“*Capital Expenditures*” means any expenditure in excess of Fifty Thousand Dollars (\$50,000) by Company normally capitalized under generally accepted accounting principles consistently applied, and in accordance with Company’s customary accounting principles and procedures, including but not limited to any fixed or moveable equipment or physical plant renovations or improvements.

"Company" means Tallahassee Medical Center, Inc., a Florida for profit corporation, and/or its permitted Affiliates.

"County" means Gadsden County, Florida, a political subdivision of the State of Florida.

"County Equipment" means the fixed and moveable equipment used or to be used in operation of the Hospital now owned or leased by County and located or to be located in the Leased Premises or to hereafter be acquired by County through lease or purchase and located or to be located in the Leased Premises, including as required pursuant to the terms of this Lease agreement. To the extent any County Equipment is purchased from County by Company, it would no longer be considered County Equipment.

"Code" means the federal Internal Revenue Code of 1986, as amended, or the provisions of any successor code with respect to the federal taxation of income of individuals, corporations and other organizations, as applicable.

"Environmental Laws" means all applicable federal, state, regional, county, municipal, and local laws, regulations, compacts, rules and policies, and the common law relating to the management, use, refinement, handling, treatment, storage, remediation, investigation, production, manufacture, transportation, disposal, emission, discharge, release or threatened release of Materials of Environmental Concern, or otherwise relating to protection of human or ecological health, or protection of the environment (including, without limitation, ambient air, surface water, groundwater, land surface, and subsurface strata), as the same may be amended or modified (and including laws enacted in the future as may pertain to the operation and maintenance of health care facility hereunder).

"Hazardous Material" means:

(a) "hazardous substances" or "toxic substances" as those terms are defined by the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. secs. 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. secs. 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. secs. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. secs. 1251 et seq.), the Clean Air Act (42 U.S.C. secs. 7401 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. secs. 2601 et seq.), and the Occupational Safety and Health Act (29 U.S.C. secs. 651 et seq.), as these laws have been amended and any other federal, state, or local statute, law, ordinance, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning hazardous materials, waste, or substances now or at any time hereafter in effect (collectively, "hazardous materials laws");

(b) "hazardous wastes," as that term is defined by the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. sec. 6902 et seq., as amended to this date and as amended after this date;

(c) any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance within the meaning of any other applicable federal, state, or local law, regulation,



ordinance, or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste substance or material, all as amended to this date or as amended after this date;

- (d) crude oil or any fraction of it;
- (e) any radioactive material, including any source, special nuclear, or by-product material as defined at 42 U.S.C. sec. 2011 et seq., as amended to this date or as amended after this date;
- (f) asbestos in any form or condition; and/or
- (g) polychlorinated biphenyls (PCB's) or substances or compounds containing PCB's.

"HIPAA" refers to the Health Insurance Portability and Accountability Act of 1996 and as amended.

"Hospital" means Capital Regional Medical Center-Gadsden Memorial Campus, located at 23186 Blue Star Highway, Quincy, Florida, and on the leased space as set forth on Exhibit A, comprised of approximately forty-one thousand one hundred thirty-eight (41,138) gross square feet more or less, attached hereto and made a part hereof and referred to as the "Site", plus all buildings, improvements and fixtures existing or to be constructed on the Site and any machinery, equipment and other property (i) owned or leased by the County and located on the Site at the time of delivery of the Initial Lease, or (ii) owned by the County and thereafter located on the Site.

"Amended Lease" means this Amended and Restated Lease Agreement and any future amendments and supplements hereto.

"Lease Term" or "Term" means the duration of the leasehold estates created in this Amended Lease.

"Lease Year" means initially the time period commencing on the Commencement Date and ending on September 30, 2019, and thereafter, the period of time commencing on October 1 of each year and ending on September 30 of the next year.

"Leased Land" means the real estate and interests in real estate described in Exhibit A attached hereto and by reference made a part hereof, together with the buildings, additions, improvements and facilities thereon and appurtenances thereto, including, but not limited to all other rights and easements appurtenant to the land, the building, and other improvements such as parking lots and common areas. However, the Leased Land does not include that part of the building or the land underneath that part of the building that is not included as part of the Hospital as set forth in Exhibit A.

"Leased Premises" means the Hospital and Leased Land.

"Materials of Environmental Concern" means any toxic or hazardous substance, toxic or hazardous waste, or pollutants, including, without limitation, asbestos, radon, PCBs, petroleum

products and byproducts, substances defined as "hazardous substance," "toxic substance," "extremely hazardous substance," "hazardous waste," "hazardous air pollutant," or any similarly identified substance or mixture, in or pursuant to any federal or state law.

*"Permitted Encumbrances"* means, as of any particular time (i) this Amended Lease, (ii) easements of record as of the date hereof, and (iii) such defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as may exist with respect to the Leased Premises so long as no one or more of them, alone or in combination, materially affects, impairs or interferes with Company's use of the Leased Premises for the purposes hereby contemplated.

*"Person"* means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, tribunal, court, governmental agency, governmental authority, governmental instrumentality or other entity or association.

*"Replacement Equipment"* means any equipment, furnishings or fixtures which is placed or installed in the Hospital by Company to replace then-existing equipment, furnishings or fixtures which was removed by Company or subject of damage or destruction during the term of this Amended Lease.

*"Service Area"* means Gadsden County, Florida, and all counties contiguous thereto served by the Hospital.

*Section 1.2 Alternative Forms of Defined Terms.* The use of the singular form of any word herein shall also include the plural form and vice versa. The use of the neuter form of any word herein shall also include the masculine and feminine forms, and the masculine form shall include the feminine and neuter forms and vice versa.

## **ARTICLE II. Demising Clause**

In consideration of and subject to the rentals and other terms and conditions herein specified, and otherwise in accordance with the provisions of this Amended Lease, County hereby demises, rents and leases the Leased Premises to Company. Company hereby rents and leases the Leased Premises from County subject to the terms and conditions herein.

## **ARTICLE III. Commencement Date; Delivery and Acceptance of Possession; Lease Term; and Surrender of Possession**

*Section 3.1 Effective Date.* This Amended Lease shall become effective on the date when signed by the last of the Parties to execute this Amended Lease (hereafter referred to as "the Commencement Date"). Except as otherwise specifically stated herein, the provisions of this Amended Lease supersede and replace the Initial Lease and the First, Second, Third, Fourth, Fifth, Sixth and Seventh Amendments to the Initial Lease. However, it is the intention of the Parties that as of the Commencement Date of this Amended Lease, the lease of the Leased Premises by County to Company shall continue uninterrupted. This Amended Lease is intended to merely modify, extend

and renew the Initial Lease on the terms as stated herein as referred to in section 155.40(23), Florida Statutes (2018).

*Section 3.2 Delivery and Acceptance of Possession.* As of the Commencement Date of the Initial Lease, Company has possessed the Leased Premises pursuant to the Initial Lease and has continuously possessed the Leased Premises through and including the Commencement Date of this Amended Lease. The County covenants and agrees that Company shall have sole and exclusive possession of the Leased Premises subject however to County's rights and obligations to enter and make necessary repairs or improvements pursuant to the County's obligations set forth herein.

*Encumbrances.* To the extent, if any, any portion of the Leased Premises is subject to the indebtedness of the County, Company shall be provided a non-disturbance agreement from the lender acceptable to Company upon request by the Company. County shall pay the costs of documentary stamps, transfer taxes and recording fees in connection with the recording of a short form memorandum of lease.

*Liabilities.* Except as Company may otherwise elect, Company will not assume and County will remain responsible for, and indemnify Company against, any and all liabilities, indebtedness, commitments or obligations of any kind whatsoever, which relate to the assets of the Leased Premises that belong to County. Except as County may otherwise elect, County will not assume and Company shall remain responsible for, and indemnify County against, any and all liabilities, indebtedness, commitments or obligations of any kind whatsoever, which relate to the assets of the Leased Premised that belong to Company. This indemnification provision as it relates to the County is not intended to extend any further than allowed by Section 768.28, Florida Statutes or any other applicable provision of Florida law.

*Section 3.3 Lease Term.*

- (a) Initial Term. This Amended Lease shall have an initial term of fifteen (15) years beginning on the Commencement Date and ending on the last day of the month, fifteen (15) years after the Commencement Date. Company agrees that it will provide a report to the County every three (3) years which will include but not be limited to a comprehensive evaluation of the state of the Hospital, the need to expand service offerings including but not limited to the potential for adding inpatient beds and services and the recruitment of physicians to support inpatient services. As part of its comprehensive evaluation Hospital shall, at its own expense, contract with an independent health planning expert to conduct a demographic assessment of the need for acute care hospital beds in Gadsden County and shall report the results of such analysis to the County.
- (b) Renewal Terms. The term of this Amended Lease shall automatically be renewed for up to two (2) additional consecutive terms of five (5) years; unless, however, either Party delivers written notice to the other Party that it will not renew at least (12) months prior to the end of the term then in effect by giving written notice thereof to the other Party.

*Section 3.4 Surrender of Possession Upon Expiration or Termination; Purchase of Added Assets; Hold Over Tenancy.*

- (a) Upon the expiration or termination of this Amended Lease as provided herein, the Company shall promptly surrender possession of the Leased Premises to County in as good condition and state of repair as on the Commencement Date, excepting modifications, additions or changes to the Leased Premises completed in accordance with this Amended Lease and excepting further ordinary wear, tear, depreciation, obsolescence and damages resulting from events or causes beyond the Company's reasonable control. In addition, Company will transfer to County the Added Assets, associated with Company's operation of the Leased Premises necessary for County to continue to operate the Leased Premises, upon County's payment to Company for the purchase of the Added Assets.
- (b) Upon termination or expiration of the Amended Lease, County shall purchase from Company all of the Added Assets, and may, at its sole discretion, purchase from the Company fixed equipment, moveable equipment, or Replacement Equipment –by payment to Company of an amount to be agreed upon that is equal to the then current fair market value of the assets and improvements added by Company through Capital Expenditures pursuant to Section 5.3(i) and otherwise in connection with the operation of the Hospital, such fair market value to be determined in accordance with the Company's customary accounting policies and procedures using the estimated useful lives of such assets without taking into account the term of the Amended Lease (the "Fair Market Value"). Should this Amended Lease be terminated by either Party or if it expires, then Company shall accept payment of the Fair Market value of the Added Assets over a period of up to thirty-six (36) months if so requested by County with interest calculated at the prevailing monthly London Interbank Offered Rate ("LIBOR").
- (c) If the Parties have not agreed in writing as to the Fair Market Value of the Added Assets within thirty (30) days after the expiration or termination of this Amended Lease, each party shall, within forty-five (45) days after the expiration or termination of this Amended Lease, designate an independent health care appraiser ("Health Care Appraiser") and shall notify the other party of the Health Care Appraiser so selected. Within thirty (30) days thereafter, the two Health Care Appraisers so selected shall determine the Fair Market Value of the Added Assets. In the event that the two Health Care Appraisers cannot agree on such determination by the end of the thirty (30)-day period, they shall select a third Health Care Appraiser within fifteen (15) days after the expiration of such thirty (30)-day period, who shall determine the Fair Market Value within thirty (30) days thereafter. The Fair Market Value shall be that determined by the two original Health Care Appraisers if they agree or that determined by the third Health Care Appraiser if the two original Health Care Appraisers do not agree. Each party shall bear the cost of the Health Care Appraiser selected by it, and, if necessary, share equally the costs of the third Health Care Appraiser. The County shall pay the costs of any title insurance and surveys and closing costs which County

may, in its sole discretion, require in connection with the purchase of the Added Assets. Each party shall be responsible for the fees of its respective counsel.

- (d) In the event, however, that County shall permit the Company to hold over with respect to the Leased Premises after expiration of the Term of this Amended Lease, such holding over shall constitute a tenancy from month to month only with respect to the Leased Premises and shall not be considered as a renewal or extension of this Amended Lease; and, during such month to month tenancy, the Company shall pay to County the Base Rent and Additional Consideration for the Leased Premises in effect immediately prior to the expiration of such Term on the same payment schedule as provided for herein; and for the period of such tenancy, the Company and the County shall be bound by all of the provisions of this Amended Lease insofar as, and to the extent that, the same may be pertinent.
  
- (e) Upon termination or expiration of the Amended Lease, Company agrees to fully cooperate with County and shall convey, upon approval by the Florida Agency for Health Care Administration (“AHCA”), all necessary licenses, certificates, permits and other documents necessary for County, or its designee to operate Hospital as a licensed Florida hospital. County shall have the principal obligation and responsibility for applying for and obtaining all necessary governmental approvals to authorize the conveyance from Company to County of licenses, certificates, permits and other documents necessary to license and operate the hospital. Company’s cooperation shall include, but not be limited to assisting County with the preparation and submission of applications with governmental authorities including, without limitation, AHCA, and obtaining the approvals thereof for all necessary or appropriate licenses, certifications, permits and similar authorizations, including, but not limited to, change of ownership/license holder, Medicare and Medicaid certifications, and the transfer or approval of all other federal, state, and local permits and licenses. It is the intent of the Parties that if Company fails to convey all such licenses, certificates, permits and other documents necessary to license and operate the hospital, then County, or its designee will be entitled to immediate and appropriate judicial relief and Company hereby consents to a court-ordered transfer of such items. County shall be responsible for the costs of such licenses, certificates, permits and other governmental approvals but Company shall be liable for County’s attorney’s fees and costs for any judicial action to compel such conveyances, upon any unreasonable refusal of Company to do so. It is the further intent of this paragraph to provide for the orderly return of Hospital to County upon termination or expiration of the Amended Lease as required by Section 155.40(2)(d), Florida Statutes (2018).

#### **ARTICLE IV.**

##### **Rent and Additional Consideration and Terms**

*Section 4.1 Rents Payable.* During each Lease Year of the Amended Lease Term, Company shall pay as rent to the County the following:

*Base Rent.* During the period from the Commencement Date through the end of the Lease Term unless abated or diminished as otherwise provided in this Amended

Lease, Company shall pay to County Base Rent at the rate of Two Hundred Thousand Dollars (\$200,000) per annum, payable in equal monthly installments of Sixteen Thousand Six Hundred Sixty Six and 67/100 Dollars (\$16,666.67) each on the first day of each calendar month during the balance of the Lease Term hereof; provided, however, that such monthly installments shall be prorated on a per diem basis for any partial calendar months occurring within the Lease Term of this Amended Lease; and further provided that the Base Rent shall be increased as set forth further below. Additionally, Company shall pay to County, along with and in addition to each monthly installment of Base Rent, the sales or privilege tax required under applicable law, including but not limited to Florida Statutes Section 212.031 and any amendments or replacements thereof. Such rent shall be paid by check to the following address:

Gadsden County Clerk  
9-B East Jefferson Street  
Quincy, Florida 32351

or to such other address as directed by County.

The Base Rent shall be increased by five percent (5%) over the then-current rate every three (3) years beginning on the first day of the first month following the third (3<sup>rd</sup>) anniversary of the Effective Date.

*Section 4.2 Additional Consideration.* As additional consideration, except as otherwise provided herein, Company shall:

- (a) During the Amended Lease Term, pay all costs and expenses of the operation and maintenance of the Leased Premises when and as the same shall be due and payable.
- (b) County and Company agree that this Amended Lease constitutes a “triple net” lease. Except as otherwise stated herein, during the term of the Amended Lease, Company shall be responsible for routine maintenance and repair of the Leased Premises, and will be responsible for maintaining the premises and equipment in the condition in which it received it, normal wear and tear excepted. Except, however, County shall be responsible for all structural defects and all defects in the Hospital’s mechanical, electrical, plumbing and HVAC systems, except that Company shall be responsible, at its sole expense, for correction or repairs of structural defects and defects in the Hospital’s mechanical, electrical and HVAC systems caused as a result of damage or modifications made by Company without the knowledge and consent of County or as a result of misuse or neglect by Company, its agents, employees, invitees, visitors or contractors. Routine maintenance and minor repairs of the Hospital building and mechanical, electrical, plumbing and HVAC systems (including routine HVAC filter cleaning and replacement) shall be performed or arranged by Company at Company’s expense. Company will maintain Hospital in a clean and sanitary condition that meets or exceeds all applicable regulatory requirements. Company will also be responsible for keeping the exterior of the Hospital building in a clean, painted and attractive condition. Company will maintain in good order, condition and repair all exterior

signs on the Hospital, the Leased Premises or on the land immediately adjacent thereto that advertise the location or presence of the Hospital.

- (c) During the Amended Lease Term, pay, as part of the cost of operating and maintaining the Leased Premises, all taxes and assessments, if any, that may be levied against the same; provided, however, that the County shall cooperate with Company in any manner reasonably requested by Company to assist Company in its efforts to take steps that may reasonably be required at any time and from time to time for the purpose of establishing and continuing to maintain, if practicable, an exemption of the Leased Premises and any Added Assets from taxation, or reduction in taxation. However, all costs of establishing or maintaining any exemptions or reductions in taxes, including costs reasonably incurred by County, will be paid by Company.
- (d) During the Lease Term, County will not be in default under this Amended Lease or be liable to Company or any other person or entity for direct, special, incidental, indirect or consequential damage or otherwise for any failure to supply any utilities, services or maintenance except for those maintenance obligations expressly assumed by County as set forth herein. "Failure to supply" shall include but not be limited to surges, interruptions, stoppage or any other failure in the quantity or quality of any utilities or services.

In the event the Company fails to make any of the payments required in this Section 4.2, the item or installment so in default shall continue as an obligation of the Company until the amount in default shall have been fully paid and such payment obligation shall survive the expiration of the scheduled Lease Term or the termination hereof by the County for a default by Company.

*Section 4.3 Governmental Approvals.* Consistent with the terms of Section 4.3 of the Initial Lease, the Company will continue to maintain the license for the Hospital issued by AHCA in a manner that assures that, upon termination of the Amended Lease, the Hospital can be returned to Gadsden County, or its designee, as a separately licensed acute care general hospital. Company shall pay for the costs of the licenses, certifications, permits and similar authorizations necessary for Company to open and operate Hospital.

*Section 4.4 Inpatient Beds.* Company shall license and operate the Hospital as a provider-based facility of Capital Regional Medical Center ("CRMC") with four (4) licensed general inpatient acute care beds, laboratory, diagnostic imaging, pharmacy and an emergency department. Company has entered into an agreement with AHCA to suspend or place the inpatient beds in a non-operational status and maintain the four licensed beds in such status until notice is provided to County and AHCA that the beds will be placed into licensed operation. Any decision to construct, build out, license, and operate any additional inpatient beds is solely and exclusively within the discretion of Company, although the County has the right to approve or deny any such capital project request pursuant to section 5.3 (i) herein. The Parties acknowledge that the Hospital has the capability of being expanded to between 10 and 16 beds and that, as of the Commencement Date of this Amended Lease there is currently space in the portions of the Hospital building that are not subject to this Amended Lease to expand further subject to terms to be negotiated between County and Company.

*Section 4.5 Hospital Equipment.* Prior to the Commencement Date of the Initial Lease, County purchased or leased all equipment necessary to initially equip the Hospital to initiate operations on the Initial Lease Commencement Date. If, during the term of the Amended Lease, Company determines that additional or replacement equipment is necessary for the customary operation of the Hospital, it shall be the responsibility of the Company to lease or purchase such equipment as it deems necessary. During the term of the Amended Lease, Company shall be responsible for maintenance and repair of all equipment, both existing and as may be purchased in the future, to continue to operate Hospital in a high-quality manner and as required by applicable regulatory requirements.

*Section 4.6 Indigent Care.* County and Company shall comply with all applicable requirements of Section 155.40, Florida Statutes. During the Term of this Amended Lease, Company shall provide for the continued treatment of indigent patients pursuant to the Florida Health Care Responsibility Act and pursuant to Chapter 87-92, Laws of Florida, in compliance with Section 155.40(2)(e), Florida Statutes (2019). In the event Company receives annually more than \$100,000 in revenues from County for Hospital operations, Company shall be accountable to the County with respect to the manner in which the funds are expended, in compliance with Section 155.40(18), Florida Statutes (2018). In the event this statute is amended during the term of this Amended Lease, then this Section 4.7 shall be subject to modification in order to maintain consistency with the requirements of Florida Law.

*Section 4.7 No Transfer of Governmental Functions.* This Amended Lease transaction is not and shall not be construed as: a transfer of a governmental function from the County to Company; constituting a financial interest of the County in the Company; or as making the Company an integral part of the County's decision-making process. Further, under the terms of this Amended Lease, the Company is not, and shall not be construed to be, "acting on behalf" of the County as that term is used in statute. This Amended Lease agreement does not require Company to comply with the requirements of chapter 119 and section 286.011, Florida Statutes. The County and the Company shall not commingle any of their funds in any account maintained by either of them. Except as otherwise provided by law, Company is not allowed to participate, except as a member of the public, in the decision-making process of the County. The County is not entitled to receive any revenues from the Company, except for rental or any taxes or administrative fees due under the Amended Lease, and the County is not responsible for the debts or other obligations of the Company.

## **ARTICLE V.**

### **Covenants of County; Covenants of Company and Operation of Hospital**

*Section 5.1 Covenants of County.* The County represents, warrants, covenants and agrees, except as set forth below, that:

- (a) Organization. The County is a political subdivision duly organized and validly existing under the laws of the State of Florida. County has the power and authority to enter into this Amended Lease acting by and through its duly authorized officials.
- (b) Unencumbered Title. Other than Permitted Encumbrances, County hereby represents that County has good and marketable title to all property and assets to be leased



hereunder subject to no mortgage, pledge, lien, conditional sale agreement, encumbrance or charge.

- (c) Necessary Property. County represents, warrants, covenants and agrees that as of the Commencement Date all Leased Premises are in good condition and repair and suitable for their intended purposes, and in compliance with all applicable codes and laws, including, but not limited to, Environmental Laws and ADA access requirements, except as otherwise stated in this Amended Lease. Company shall landscape the grounds of the Leased Premises in a manner appropriate for a rural hospital facility and shall provide regular maintenance of the landscaping during the term of this Amended Lease. County shall maintain all parking areas and driveways in commercially appropriate condition during the term of this Amended Lease. With respect to all portions of the Hospital site that are not subject to this Amended Lease, County shall assure access to Company to the extent reasonably necessary for the appropriate operation of the Hospital; including, but not limited to, the provision of adequate parking in the amount that exists as of the Commencement Date.
- (d) No Breach of Statute or Contract. County is not aware of any default under or in violation of, any applicable statute, law, ordinance, decree, order, rule, regulation of any governmental body, or the provisions of any franchise or license, or in default under, or in violation of, any provision of its governing statutes, any promissory note, indenture or any evidence of indebtedness or security therefore, lease, contract, purchase or other commitment or any other agreement by which it is bound which may result in a material adverse effect on the business or condition, financial or otherwise, of the Leased Premises. The consummation of this Agreement and the transactions contemplated hereby will not constitute or result in any such default, breach or violation, and no domestic governmental permits, consents or approvals are necessary to implement the lease and operational transactions contemplated hereby.
- (e) Litigation. There is no suit, claim, action or proceeding now pending or, to the knowledge of County, threatened against County before any court, administrative or regulatory body, or any governmental agency or any grounds therefore which may result in any judgment, order, decree, liability or other determination which will, or could, have any adverse effect upon the business or condition, financial or otherwise, of the Leased Premises. No such judgment, order or decree has been entered which has, or will have, such effect. There is no claim, action or proceeding now pending or to the knowledge of County threatened before any court, administrative or regulatory body, or any governmental agency, which will, or could, prevent or hamper the consummation of the lease and operational transactions contemplated by this Amended Lease.
- (f) Comments and Approvals. No consent or approval by County is necessary to the continued lease and grant of use by County to Company hereunder of all the rights, contracts, properties, franchises, licenses, interests and business of the Leased Premises and upon the consummation of this Amended Lease Company will continue to have the right of use of all of the rights, properties, franchises, interests and business

of the Leased Premises as set forth herein. County has full power and authority to enter into this Amended Lease and to perform any of its obligations hereunder, and no other or further consent, approval or action, statutorily or otherwise, is required to be taken or obtained by County in order to perform all its obligations hereunder and to effect the lease and right of use of assets to Company pursuant to, and in the manner contemplated by, this Amended Lease.

- (g) Right to Make Repairs, Etc. Except as herein otherwise expressly provided, the Company shall have the right from time to time to make repairs, restorations, replacements, additions, alterations and changes, in or to the Leased Premises. Any such repairs, restorations, replacements, additions, alterations and changes shall be made in conformance with all applicable codes, ordinances, licensure and other necessary regulatory requirements.
- (h) No Breach. The execution and delivery of this Amended Lease will not result in a breach of any of the terms of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other agreement or instrument to which either the County is a party or by which it or any of its property is bound or its bylaws or any of the constitutional or statutory rules or regulations applicable to its property.
- (i) Review of Articles of Incorporation. Pursuant to Section 155.40(2)(a), Florida Statutes (2019), Company's Articles of Incorporation have been reviewed and approved by County.

*Section 5.2 Covenants of Company.* Company represents, warrants, covenants and agrees that:

- (a) Organization. The Company is a for profit corporation organized under the laws of the State of Florida and is in good standing and authorized to transact business under the laws of the State of Florida and is empowered by its Board of Directors to enter into and be bound by this Amended Lease.
- (b) Occupancy. The Company shall use and occupy the Leased Premises and shall exclusively administer, operate and maintain the same as a hospital without discrimination as to race, creed, color, sex, national origin or disability. Throughout the term of this Amended Lease, Company shall operate Hospital as an acute care hospital. Company shall operate the Hospital's emergency department twenty-four hours per day/seven days per week/ three hundred and sixty five days per year.
- (c) Compliance with Laws. The Company shall administer, operate and maintain the Leased Premises in accordance with the terms of this Amended Lease; and, in the discharge of its obligations hereunder, shall comply in all material respects with all present and future applicable laws, ordinances, rules, regulations, requirements, and orders of all governmental authorities or agencies having jurisdiction over the Leased Premises or the operations of the Company; provided, however, that nothing herein contained shall require the Company to comply with, observe, and conform to any such law, ordinance, rule, regulation, requirement or order so long as the validity

thereof or the applicability thereof shall be contested in good faith. Except as otherwise expressly provided herein, all costs of administration, operation, and maintenance of the Leased Premises shall be the exclusive obligation of the Company and shall be discharged by the Company at its sole expense.

- (d) Information. Upon termination of this Amended Lease for any reason, Company will, within not less than two hundred seventy (270) days prior to the termination of the Amended Lease, provide County with such information as County may reasonably request to enable County to prepare a statement of financial condition for submission of request for bids or to otherwise lease the Leased Premises to a third party.
- (e) Authority to Enter Amended Lease. Company has the full right, power and authority to enter into and perform its obligations under this Amended Lease. This Amended Lease does not conflict with, nor violate any existing agreements to which Company is a party, and all consents and approvals necessary for Company to enter into this Amended Lease have been obtained. Execution of this Amended Lease will not cause a default of any agreement to which Company is a party.
- (f) Litigation. There is no suit, claim, action or proceeding now pending or, to the knowledge of Company, threatened against Company before any court, administrative or regulatory body, or any governmental agency, nor are there any grounds which may result in any judgment, order, decree, liability or other determination which will, or could, have any adverse effect upon the business or condition, financial or otherwise, of the Leased Premises. No such judgment, order or decree has been entered which has, or will have, such effect. There is no claim, action or proceeding now pending, or to the knowledge of Company threatened, before any court, administrative or regulatory body, or any governmental agency, which will, or could, prevent or hamper the consummation of the Amended Lease and operational transactions contemplated by this Amended Lease.

*Section 5.3 Operation of Hospital.*

- (a) Use of Leased Premises and Additional Operating Capital. In connection with its discharge of its responsibilities under this Amended Lease, the Company shall have the right to use and occupy the Leased Premises for lawful purposes only and only for the purposes set forth herein. Company may, at its own expense, from time to time provide such additional operating capital as may be needed to discharge its responsibilities and obligations hereunder. Company shall name and use the name of the Hospital in a manner that either includes the words “Gadsden Memorial Hospital” or other words that identify the Hospital with Gadsden County.
- (b) Compliance with laws, regulations and accreditations. The Company shall conduct all activities and operations of the Leased Premises in compliance in all material respects with the requirements, standards, and conditions set forth in all applicable federal, state, county and local statutes, orders, approvals, permits, registration, zoning or land use requirements and restrictions, variances, licenses, accreditations, rules and

regulations, including, but not limited to, Medicare/Medicaid and other federal health care programs, and Environmental Laws. Company shall, at all times during this Amended Lease, maintain the status of the Hospital as a Medicare and Medicaid provider.

- (c) Company's Obligations with Respect to Environmental Laws. Company and the Leased Premises will be kept in compliance with all Environmental Laws. All governmental permits relating to the use or operation of the Leased Premises required by applicable Environmental Laws will be obtained by Company and will be kept in effect during the term of the Amended Lease, and Company will comply with them. Except as otherwise provided in this subsection, Company will not permit to occur any release, generation, manufacture, storage, treatment, transportation, or disposal of Hazardous Material on, in, under, or from the Leased Premises. Notwithstanding the foregoing, however, the Parties acknowledge that Company operates a hospital, and that in the ordinary course of operation, Company, in compliance with all applicable Environmental Laws and other requirements, regularly (i) uses, stores, transports and disposes of Hazardous Materials, including radioactive materials, for medical procedures, and (ii) generates material quantities of biohazardous and radioactive wastes as the by-product of such medical procedures, and (iii) uses, stores, transports, and disposes of hazardous materials for purposes of cleaning, disinfecting, maintaining and repairing the Hospital (all of the items described in clauses (i) through (iii) being collectively referred to as the "Permissible Hazardous Material"). The Parties agree that all such Permissible Hazardous Material may be used in the operation of Company's business, and those operated by Company's agents, employees, contractors, subcontractors and consultants, provided that all such Permissible Hazardous Material is used, stored, transported and disposed of in full compliance with all applicable Environmental Laws and other regulatory requirements. Company and County will immediately notify each other, in writing, if either of them has or acquires notice or knowledge that any Hazardous Material, including Permissible Hazardous Material, has been or is threatened to be released, discharged, disposed of, transported, or stored on, in, under, or from the Leased Premises in violation of Environmental Laws or other regulatory requirements; as the result of any act or omission of Company or County, as the case may be, their respective employees, contractors or invitees. If any Hazardous Material, including Permissible Hazardous Material, is found on the Leased Premises in violation of Environmental Laws or other regulatory requirements by reason of any such action or omission, then the party responsible for the release, discharge, disposal or transportation of such Hazardous Material, at its own cost and expense, will immediately take such action as is necessary to detain the spread of and remove or contain the Hazardous Material to the reasonable satisfaction of the other party and the appropriate governmental authorities. Notwithstanding any provision of this Amended Lease to the contrary, however, Company shall not be responsible or liable for compliance with any Environmental Laws with respect to the Premises to the extent accruing, or attributable to the period prior to the Commencement Date of the Initial Lease.

- (d) Company to pay or discharge certain liabilities. The Company shall pay or discharge when due all liabilities and obligations incurred by the Company in operation and maintenance of the Leased Premises from and after the Commencement Date until expiration or termination of this Amended Lease. Such obligations shall continue after the termination of this Amended Lease as to any liabilities and obligations incurred during the term of the Amended Lease but not discovered or matured until thereafter.
- (e) Company to perform certain contracts and commitments. The Company shall perform in all material respects all contracts and commitments made after the Commencement Date in the ordinary course of its operation of the business of the Hospital and does hereby indemnify the County against all liabilities under such contracts arising during the term of this Amended Lease.
- (f) Company responsible for non-discriminatory employment. The Company shall have the sole responsibility for establishment and enforcement of uniform non-discriminatory employment practices regarding all employees of the Hospital, and the Company shall indemnify the County against all liabilities which may be imposed upon or claimed against the County arising, directly or indirectly, because of the Company's establishment or enforcement of such personnel practices and procedures from and after the Commencement Date.
- (g) Company to manage, administer and govern the Hospital. Except as provided in this Amended Lease, the County reserves no power or authority with respect to the operation of the Hospital by the Company and activities incident thereto, it being the intention of the Parties hereto that so long as the Company shall duly and faithfully observe and perform all of the terms, covenants, provisions and agreements of this Amended Lease, the Company shall manage, administer and govern the Hospital in its activities and affairs on the continuing day-to-day basis, including matters relating to the medical staff and other functions customarily conducted or pursued by the independent managing and governing authority of a private hospital.
- (h) Maintenance and Repair. During the term of the Amended Lease, Company shall be responsible for maintenance and repair of the Leased Premises as set forth in paragraphs 4.2(b) and 4.5 above.
- (i) Capital Projects. With respect to Capital Expenditures subject to purchase by County from Company as Added Assets at Lease termination, Company shall notify County of the need for capital improvements in excess of Fifty Thousand Dollars (\$50,000.00) including, but not limited to the need to build out additional bed and program space. In determining whether any Capital Expenditure or improvement has a value in excess of Fifty Thousand Dollars (\$50,000), any Capital Expenditure or improvement commenced or purchased during any consecutive three-month period that is for a similar purpose or function within the Hospital shall be aggregated. County shall either approve or deny a request to fund a capital improvement request from Company within thirty (30) days of receipt of such request. If County denies a

capital improvement request, or cannot provide funding within a reasonable time frame acceptable to Company, Company may fund such capital improvements without approval of County. Company shall not expand the footprint of the current structure in which the Hospital is housed without prior express approval of County. Company shall reasonably evaluate and respond to any requests from County to add beds or services; but shall have no obligation to commit to or make any requested expansion. This provision regarding request by the Company to fund Capital Projects or Capital Expenditures does not apply to the purchase, repair or replacement of Hospital equipment. That responsibility and associated costs is an obligation of Company as set forth in section 4.5 above.

- (i) Encumbering, Subleasing and Assignment. Except as set forth herein, the Company shall not encumber by mortgage, deed of trust, or any other instrument, its leasehold interest and estate in the Leased Premises without the prior written consent of the County. In no event shall any mortgage or security interest extend to or affect the fee, the reversionary interest, or the estate of the County in and to the Hospital without the prior written consent of the County. The Company shall not sublease the Leased Premises or any part thereof or assign this Amended Lease without having obtained in each case the prior written consent of County, except that the prior consent of County shall not be required with respect to (i) an assignment to any other Affiliate of Company or (ii) sublease for patient or employee convenience activities such as, but not limited to, gift shops, snack shops, child care, flower shops, counseling services, or for other services related to the operation of the Leased Premises as a hospital; provided, however, no such transfer, assignment or sublease shall conflict with the covenants of the Company under this Amended Lease or relieve the Company of its obligations hereunder for payment of rent or additional payment required hereunder or from any other of the conditions, obligations, agreements and covenants of this Amended Lease or with respect to any portion of the Leased Premises so transferred, assigned or subleased; and, provided further, however, that in each case the transferee, assignee or sublessee shall have sufficient financial responsibility and technical competence to conduct in an adequate manner the functions contemplated by the sublease; and provided further, however, that Company shall require any sublessee described in (ii) above to obtain and maintain insurance reasonably adequate to insure against risks arising from such sublessee's operations on the Leased Premises and that such insurance will name County as an additional insured. Any sublease shall provide for indemnification of County in a level equal to or greater than that contained in this Amended Lease. Consent shall not be unreasonably withheld or delayed by County.

The Parties acknowledge that there are currently approximately twelve hundred (1200) gross square feet located in the northwest section of the Leased Premises that is constructed as medical office space (hereafter "Medical Office Space"). Notwithstanding any other provision of this Amended Lease to the contrary, Company may sublease or otherwise make the Medical Office Space available to physicians or physician extenders without prior written consent of County so long as the physician

and physician extenders are Medicaid providers and will treat Medicaid patients that seek services from providers using the Medical Office Space. This provision regarding the sublease of Medical Office Space applies to any future space within the Leased Premises that is constructed or otherwise configured for similar medical office space purposes.

- (j) Utility Services. The Company shall pay all charges for utility services furnished to the Leased Premises.
- (k) Access to Leased Premises by County and Designees. County, its agents, employees, and contractors may enter the Leased Premises at any time in response to an apparent emergency, and, in all other cases, at reasonable business hours to (a) inspect the Leased Premises, (b) exhibit the Leased Premises to prospective purchasers, lenders, or tenants, (c) determine whether Company is complying with its obligations in this Amended Lease, (d) supply any other service which this Lease requires County to provide, (e) post notices of non-responsibility or similar notices, or (f) make repairs which this Amended Lease requires County to make; however, all work will be done as promptly as reasonably possible and so as to cause as little interference to Company as reasonably possible. Company waives any claim on account of any injury or inconvenience to Company's business, interference with Company's business, loss of occupancy or quiet enjoyment of the Leased Premises, or any other loss occasioned by Company to the extent County is or is attempting to perform work required or reasonably believed by County to be required under this Amended Lease. Every entry upon the Leased Premises by County or its authorized designate(s), excepting only entry during an apparent emergency, as hereinafter provided, shall be made in the presence of a representative of Company. Company and County shall always preserve the confidentiality of Company's protected health information as defined by HIPAA, files and other materials during the period of such entry. An "entry in the event of an apparent emergency" or similar reference in this paragraph, shall be an entry by County or its authorized designate(s) under such circumstances as may be necessary to prevent or correct an imminent danger to life or property.
- (l) Not a "Business Associate." Nothing contained herein shall be construed to make County responsible for or to provide County access to "protected health information" or to make County "business associates" of Company as those terms are defined and used in HIPAA.
- (m) Periodic Reports. Unless otherwise mutually agreed by Company and County, Company shall periodically provide a report to County on the operations of the Hospital including, without limitation, reports on utilization, quality of care, nature of the services being provided and financial performance. Such reports shall be provided through an appearance at a meeting of the Board of County Commissioners of County (or their designee) by an authorized representative of Company. Such reports shall include, without limitation, reports on the Hospital by independent third parties including the Centers for Medicare and Medicaid Services, the Joint Commission and AHCA. Such reports shall be provided at least annually. Nothing herein shall limit

the ability of the County or its designees to conduct its own assessments or prepare its own reports evaluating the Leased Premises so long as such evaluations or the preparation of such reports does not disrupt the normal operation of the Company or the Hospital or infringe on patient privacy or confidentiality. The provision of all such evaluations or reports does not authorize either County or Company to provide any binding direction to the other beyond that otherwise stated in this Amended Lease.

## **ARTICLE VI. Condemnation**

Either Company or County shall have the right, in each party's independent judgment and at each party's independent expense, to contest any threatened taking of all or any portion of the Leased Premises by condemnation, eminent domain or other process. In the event of a taking of all or any portion of the Leased Premises by condemnation, eminent domain or other process, the Company shall waive any rights which it may have to any portion of the proceeds of the award for such taking, except to the extent hereinafter provided. Such proceeds shall be deposited in such lawful manner as the County shall direct and the same, at the direction of the County, shall be expended, to the extent possible, for the replacement of any portion of the Leased Premises so taken. County, upon being notified of any action or proceeding to take all or any portion of the Leased Premises, shall immediately notify the Company of the pendency of such action or proceeding. If, after such taking of any portion of the Leased Premises, the remaining portion is determined by the Company to be insufficient for further operation as a hospital, this Amended Lease shall terminate without penalty to either party hereto as of the effective date of such taking.

If a partial taking of the Leased Premises by condemnation, eminent domain or other process shall occur and if the Amended Lease is not terminated as provided herein, the Company shall be allowed a proportionate reduction in the rental and additional consideration herein provided to be paid to County corresponding to the time during which and the extent to which the Company shall be deprived of the use and occupancy of the Leased Premises or any portion thereof.

A sale or transfer of all or any portion of the Leased Premises by County to any authority having the power of eminent domain, either under threat of condemnation or while condemnation proceedings are pending, shall be deemed a taking under the power of eminent domain for all purposes of this Article VI.

## **ARTICLE VII. Defaults and Remedies**

*Section 7.1 Events of Default by Company.* The following shall be "events of default" under this Amended Lease and the terms "event of default" or "default" shall mean, whenever they are used in this Amended Lease, any one or more of the following events:

- (a) The Company shall have admitted in writing it is insolvent or shall have filed a petition asserting that it is bankrupt or shall have made an assignment for the benefit of its creditors;
- (b) Possession of the Company's assets shall be taken by a receiver or trustee;



- (c) Except as otherwise herein permitted, including the permitted assignment or sub-lease of this Amended Lease or any portion of the Leased Premises by Company to an Affiliate of Company; the Company shall sublease the Leased Premises or any part thereof, or if the interest of the Company under this Lease shall be sold, assigned, or transferred under legal process or otherwise to any other person, firm or Company without the prior written consent of County as herein provided;
- (d) Should the County believe that Company has failed to perform or observe any other covenant required under this Amended Lease, then County shall provide Company written notice thereof. Within ten (10) business days thereof, County and Company shall begin to negotiate in good faith to resolve any dispute regarding any such assertion by County. Following such negotiation, should County provide written notice to Company regarding any failure of Company to perform or observe any covenant of this Amended Lease, then Company shall, within thirty (30) days of receipt, commence appropriate action in good faith to cure such failure and thereafter prosecute the same to completion with due diligence. Failure of Company to effectuate a cure to the reasonable satisfaction of County shall constitute an event of default; or
- (e) The Company shall have vacated the Leased Premises.

*Section 7.2 Remedies Upon Default by Company.* If any one or more events of default set forth in Article VII occurs, then County has the right, at its election:

- (a) Upon one hundred twenty (120) days' notice to Company, to terminate this Amended Lease, in which case Company's right to possession of the Leased Premises will cease and this Amended Lease will be terminated, except as to Company's liability, as if the expiration of the Amended Lease fixed in such notice were the end of the Amended Lease;
- (b) Upon one hundred twenty (120) days' notice to Company, to reenter and take possession of the Leased Premises or any part of the Leased Premises, repossess the same, expel Company and those claiming through or under Company, and remove the effects of both or either, using such force for such purposes as may be necessary, without being liable for prosecution, without being deemed guilty of any manner of trespass, and without prejudice to any remedies for arrears of any amounts payable under this Amended Lease or as a result of any preceding breach of covenants or conditions; or
- (c) Upon thirty (30) days' notice to Company, to cure any event of default and to charge Company for the cost of effecting such cure, including without limitation reasonable attorneys' fees and costs, provided that County will have no obligation to cure any such event of default of Company.
- (d) Should County elect to reenter as provided herein, or should County take possession pursuant to legal proceedings or pursuant to any notice provided by law, County may,

from time to time, without terminating this Amended Lease, relet the Leased Premises or any part of the Leased Premises on such conditions and upon such other terms as County, in its reasonable discretion, may determine. No such reentry or taking possession of the Leased Premises by County will be construed as an election on County's part to terminate this Amended Lease unless a written notice of such intention is given to Company. No written notice from County under this section or under a forcible or unlawful entry and detainer statute or similar law will constitute an election by County to terminate this Amended Lease unless such notice expressly so states. County reserves the right following any such reentry or reletting to exercise its right to terminate this Amended Lease by giving Company such written notice, in which event this Amended Lease will terminate as specified in such notice.

- (e) Notwithstanding the foregoing, in the event Company vacates or abandons the Leased Premises, County may immediately exercise all rights and remedies available under this Amended Lease or in law or equity and County's obligations to Company shall immediately terminate.

*Section 7.3 Events of and Remedies Upon Default by County.* In the event County shall neglect or fail to perform or observe any warranties, covenants, representations, provisions, or conditions made by or required to be performed by County under the terms of this Amended Lease and County shall, within thirty (30) days after written notice thereof by Company, fail to commence appropriate action in good faith to cure such failure and thereafter prosecute the same to completion with due diligence, County shall be responsible to Company for any and all costs incurred by Company as a result of the efforts of Company to cure the default of County. Company shall have the right, in addition to all other remedies provided in this Amended Lease or by law, to injunctive relief; provided, further, Company shall have the right to cure any such default at the expense of County, and County shall pay promptly to the Company the amount of such expenditure by Company to cure such default by County.

*Section 7.4 Provisions Applicable to All Parties.*

- (a) Remedies Cumulative. No remedy conferred upon or reserved to either party by this Amended Lease is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Amended Lease or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. Each party shall give the other party notice and a reasonable opportunity to cure prior to exercising any remedy reserved to such party in this Amended Lease.
- (b) Attorney's Fees and Litigation Expenses. In the event either party should employ attorneys or incur other expenses for the enforcement of performance or observance of any obligation or agreement contained in this Amended Lease, each party shall be responsible for its respective attorney's fees, litigation costs and expenses incurred by or on behalf of such party, except as otherwise provided herein.

- (c) Waiver and Breach. In the event any agreement contained in this Amended Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**ARTICLE VIII.  
Termination**

*Section 8.1 Termination by Company.* In addition to the other provisions in this Amended Lease,

- (a) Company may terminate the Lease upon not less than 360 days' notice to County, if Company determines that operating losses, including surtax revenues provided by County, during the Company's completed fiscal year preceding the notice are in excess of Five Hundred Thousand Dollars (\$500,000) and further that Company, in its sole discretion, determines that continued operation of the Hospital is not in its best interest. If Company determines that the operating losses are such that Company may choose to exercise this Section 8.1(a) option to terminate, then Company will immediately notify County in order that County may consider, in its discretion, whether it will attempt to take steps to try to assist Company in a manner that may avoid termination. Failure to so notify the County shall in no way impact the Company's termination right as set forth in this section.
- (b) Company may, by notice to the County of its decision to do so, terminate this Amended Lease immediately if the Leased Premises are destroyed or materially damaged and not repaired, reconstructed or replaced or if title to or the use of the Leased Premises or any material part thereof is taken under exercise of the power of condemnation, eminent domain or other process and not replaced or restored to the satisfaction of the Company in its sole discretion.

*Section 8.2 Termination by County.*

- (a) Other than as set forth herein, this Amended Lease shall not be terminable by County prior to the expiration of the entire term (including any renewals) unless there is an uncured material breach by Company.
- (b) The County may terminate this Amended Lease upon the occurrence and continuation of an event of default under Section 7.1 and Section 7.2 above.

*Section 8.3 Reversion of Leased Premises to County.* Upon termination of this Amended Lease for any reason by either the County or the Company, the Leased Premises, including all replacement and additional furnishings and equipment installed or placed in or on the Leased Premises before termination, including, without limitation, the Leasehold Capital Improvements and Added Assets, shall revert to County, subject only to County's purchase of the Added Assets as set forth in this Amended Lease and further subject to Company's obligations to cooperate in the return of the Hospital and Leased Premises as set forth herein.

*Section 8.4 Management After Amended Lease Term Expiration.* At the end of the initial term of the Amended Lease, (if not renewed), or at the termination of any renewal hereunder, or if terminated earlier by mutual consent, by operation of law or otherwise, Company agrees that it will enter good faith negotiations to continue under a management arrangement, or similar arrangement for up to twelve months at County's option, in order to allow an orderly continuation of operations by County. The management agreement will be upon such terms as are customary within the industry at the time of the negotiation and execution of the management agreement. Company agrees to use its reasonable best efforts to negotiate a commercially reasonable management agreement as provided herein. However, if, after a 60-day period of negotiations, the Parties are unable to reach agreement on the terms of a management agreement acceptable to Company at its sole reasonable discretion, this provision shall have no further force or effect. Irrespective of whether or not the Parties enter such a management agreement, immediately upon expiration or termination of the Amended Lease the County shall bear all costs and responsibilities for staffing, operating, and maintaining the Hospital; and, to the fullest extent practicable, those Company Hospital employees necessary to the operation of the Hospital by County, other than executive management Company employees, shall, at County's option, become employees of County or its designee; and Company and County will cooperate to endeavor to ensure a smooth transition of employment for such employees. As set forth elsewhere in this Amended Lease, Company and County agree to cooperate in the transfer of all necessary or appropriate licenses and permits from Company to County upon notice of Amended Lease termination or non-renewal, so that the transfers are effective on the Amended Lease termination date or as soon thereafter as practicable.

## **ARTICLE IX. Insurance and Indemnity**

*Section 9.1 Insurance.* The County and Company shall maintain, except as otherwise provided herein, the following insurance at its respective sole cost and expense:

- (a) Casualty. County shall, at its sole expense and at all times, keep the Leased Premises insured against loss or damage by fire, windstorm, flood, hurricane, tornado, or any other casualty by a policy or policies of full extended coverage insurance in a company or companies of good standing and qualified to write such insurance in the State of Florida or a suitable program of self-insurance. Such insurance or self-insurance programs shall be for an amount not less than the full insurable value of each of the Leased Premises, including completed improvements and additions thereto, or any separable portion thereof. Each such policy shall provide that the loss, if any, with respect to the Leased Premises shall be payable to the County, or the Company as its interests may appear. If, at any time during the Amended Lease Term, the Leased Premises are destroyed or damaged, County shall use its reasonable best efforts, exercised promptly and diligently, to repair such damage and reconstruct and restore the Leased Premises as soon as reasonably possible and as near to its former condition as practicable at County's expense, using the proceeds of such insurance or self-insurance program exclusively for such purposes. If it is reasonably practicable to do so, Company may continue the operation of the Hospital on the Leased Premises during the period the damage, destruction, repair, reconstruction, or restoration continues; provided, however, if, during such period, it is not reasonably practicable to operate the Hospital on the Leased Premises, the Company may cease operations

of the Hospital, until the repairs are made and the reconstruction and restoration completed. However, the provisions of this paragraph shall not supersede Company's right to immediately terminate the Amended Lease under Section 8.1(b).

- (b) Public Liability. Company shall maintain comprehensive general public liability insurance including blanket contractual liability and personal injury liability protecting Company against liability for injuries to persons and property with limits and in amounts as maintained by Company for comparable hospital facilities operated by it or its Affiliates. Such annual aggregate and umbrella may be applicable to other Affiliates of the Company.
- (c) Automobile. Company shall maintain automobile insurance including owned, non-owned and hired automobiles protecting the Company against liability as required by state law.
- (d) Business Interruption. Company shall maintain use and occupancy (or business interruption) insurance, covering interruption of the Company's operations in whole or in part by reason of the total or partial suspension of, or interruption in, the operation of the Hospital, including its rental of buildings, caused by the damage to or destruction of any part of the Hospital, with such exceptions as are customarily imposed by insurers, in an amount to be determined solely by Company. Regardless of the amount of such insurance, County shall not be liable to Company for damages caused by business interruption by reason of the total or partial suspension of, or interruption in, the operation of the Hospital caused by the damage to or destruction of any part of the Hospital
- (e) Professional Liability. Company shall, at its expense and at all times, procure and maintain a policy or policies of professional liability insurance in a company or companies of good standing qualified to write such insurance in the State of Florida or a suitable program of self-insurance in an amount not less than that maintained for comparable hospital facilities operated by it or its Affiliates.
- (f) Worker's Compensation. Company shall further, at its expense and at all times, maintain insurance or one or more suitable self-insurance programs to cover worker's compensation and in such amounts as are required by the laws of the State of Florida.

With respect to all of the above-described types of insurance to be maintained by Company, Company shall have the right to modify or adjust coverages, limits, and deductibles, and from time to time, consistent with then existing policies of Company and its Affiliates. Each policy with respect to the Leased Premises provided for in subsection (a) of this Section 9.1 shall name or carry an endorsement including Company as an additional insured and shall be cancelable only upon at least ten (10) days' written notice to Company but only if replaced by County with comparable insurance. Each policy with respect to the Leased Premises provided for in subsection (b) of this Section 9.1 shall name or carry an endorsement including County as an additional insured and shall be cancelable only upon at least ten (10) days' written notice to County but only if replaced by Company with

comparable insurance. A duplicate original of each such policy or a certificate or certificates in evidence thereof shall be delivered to and held by County.

*Section 9.2 Indemnity.* Company and County shall each indemnify and hold the other harmless from and against any damages resulting from a breach of their respective obligations under this Amended Lease. County shall remain responsible for, and indemnify Company against, any and all liabilities, indebtedness, commitments or obligations of any kind whatsoever, which relate to the assets of the Leased Premises prior to the Commencement Date of this Amended Lease. County's indemnification obligation is not intended to extend any further than allowed by Section 768.28, Florida Statutes or any other applicable provision of Florida law.

## **ARTICLE X. Subordination; Non-Disturbance; Attornment**

*Section 10.1 Subordination, Non-Disturbance and Attornment.* At the request from time to time by one or more institutional holders of a mortgage or deed of trust that may hereafter be placed by the County upon the Leased Premises or other parts of the building in which the Leased Premises are located, and any and all amendments, renewals, replacements, modifications, consolidations, spreaders, refinancing and extensions thereof (collectively, a "Mortgage"), Company shall subordinate this Amended Lease and all of Company's rights and estate hereunder to each such Mortgage as though each such Mortgage has or had been executed, acknowledged, delivered and recorded prior to the Amended Lease and any amendments, modifications, extensions, renewals or restatements thereof. Company shall further agree with each such holder of a Mortgage ("Mortgagee") that Company will attorn to and recognize such Mortgagee or the subsequent purchaser of the Mortgage from Mortgagee at any foreclosure sale or any sale under a power of sale contained in any such Mortgage, as County under this Amended Lease for the balance of the Term then remaining, subject to all of the terms and provisions of this Amended Lease; provided, however, that each such Mortgagee simultaneously executes and delivers a written agreement in recordable form (a) consenting to this Amended Lease and agreeing that, notwithstanding any such other lease, mortgage, deed of trust, right, title or interest, or any default, expiration, termination, foreclosure, sale, entry or other act or omission under, pursuant to or affecting any of the foregoing, Company shall not, so long as no Event of Default by Company has occurred hereunder, be disturbed in peaceful enjoyment of the Leased Premises nor shall this Amended Lease be terminated or canceled at any time, except in the event County shall have the right to terminate this Amended Lease under the terms and provisions expressly set forth herein; and (b) agreeing that for any period while it is landlord hereunder, it will perform, fulfill and observe all of County's representations, warranties and agreements set forth herein.

*Section 10.2 Estoppel Certificates.* At any time and from time to time, County and Company each agree, upon request in writing from the other, to execute, acknowledge and deliver to the other or to any person designated by the other a statement in writing certifying that the Amended Lease is unmodified and is in full force and effect, or if there have been modifications, that the same is in full force and effect as modified (stating the modifications), that the other party is not in default in the performance of its covenants hereunder, or if there have been such defaults, specifying the same, and the dates to which the rent and other charges have been paid.

**ARTICLE XI.**  
**Notices**

Any notice or notification specified hereunder to be given to the Company or the County or GHI shall be deemed effective upon the earlier of actual delivery or three (3) days following the date such notice shall have been mailed by United States certified or registered mail, postage prepaid, addressed to the Company, or County, or GHI, respectively, as follows:

County:	County Administrator Gadsden County, Florida 9-B East Jefferson Street Quincy, Florida 32353-1799
with copy to:	County Attorney c/o Gadsden County Administrator 9-B East Jefferson Street Quincy, Florida 32353-1799
Company:	Chief Executive Officer Tallahassee Medical Center, Inc. d/b/a Capital Regional Medical Center 2626 Capital Medical Boulevard Tallahassee, Florida 32308
with copy to:	Operations Counsel Legal Department P.O. Box 550 Nashville, TN 37202

The County or the Company may, however, from time to time by notice in writing to the other party establish an addressee or an address differing from the foregoing for the purpose of giving notice or notification under this Amended Lease.

**ARTICLE XII.**  
**Miscellaneous Provisions**

*Section 12.1 Right of First Refusal to Lease or Purchase.* If County receives and desires to accept or desires to make any bona fide offer (an "Offer") for the sale of the Leased Premises (and any other assets associated with Hospital) in whole or in part or for the sale or transfer of the Leased Premises, County shall notify Company in writing of each Offer. This notice (the "Notice of Offer") shall contain a copy of the Offer and all other terms and conditions applicable to the Offer. In the event that the Offer is for other property in addition to the Leased Premises or some part thereof, the Notice of Offer shall pro rate the Offer, stating that portion of the Offer which is related to the Leased Premises. The whole or that part of the Leased Premises to which any Offer for the sale or other conveyance of the Leased Premises applies is referred to as the "Offer Premises." Company shall have the right to purchase ("Right of First Refusal") the Offer Premises at the price and terms set

forth in the Notice of Offer. Company shall exercise its Right of First Refusal, if at all, by giving written notice of exercise to County no later than the date thirty (30) days after Company's receipt of the Notice of Offer. If Company does not exercise the Right of First Refusal with regard to an Offer of which it has been given a Notice of Offer, and if within one hundred eighty (180) days after the date of the Notice of Offer, the Offer Premises is conveyed in accordance with the Offer, Company's Right of First Refusal shall terminate with respect to the Offer Premises so sold or conveyed, provided that: (i) the Right of First Refusal shall remain in effect with respect to the balance of the Leased Premises, if any, not conveyed pursuant to the Offer, (ii) once an Offer of which County has given Company Notice of Offer is accepted by County, County shall not agree to a reduction of the purchase price, more favorable terms or any change in the nature or amount of the consideration to be given in exchange for the Offer Premises without first giving Company notice of the reduction, more favorable terms or change, and upon receipt of that notice, Company shall again have the Right of First Refusal to acquire the Offer Premises at the new price and new terms; and (iii) if any Offer is not accepted by Company or if the Offer Premises are not conveyed in accordance with the accepted Offer within one hundred eighty (180) days after the date Company received the Notice of Offer, then Company's Right of First Refusal shall be applicable to the Offer Premises and to any subsequent Offer received by County with respect to the Leased Premises during the term of this Amended Lease. Upon request of County, Company shall furnish to County or the purchaser of the Offer Premises an affidavit in recordable form stating the extent to which Company' Right of First Refusal has terminated in accordance with this Section and setting forth such other matters as Company shall deem necessary or appropriate. A sale by County of the Leased Premises to a third party will not terminate, modify, or affect in any manner this Amended Lease. In the event that Company exercises the Right of First Refusal with respect to the Leased Premises, County shall deliver exclusive possession of the Offer Premises to Company at the closing. The closing for the payment of the purchase price and for delivery of County's deed for the Leased Premises shall be held in Gadsden County, Florida, at a time mutually agreed to by the Parties within thirty (30) days after the date that Company exercises its Right of First Refusal.

In addition, County shall consult with Company regarding the lease of any portion of the Hospital building not subject to the Amended Lease and will provide Company a right of first refusal to lease said space upon the same terms and conditions as contained in the offer from the third party, in accord with the process described in the above preceding paragraph. Should Company opt not to exercise this right of first refusal, and if the potential lessee would provide health care related services, then County shall seek the consent of Company to any lease or sale of space in the portion of the Hospital building not subject to the Amended Lease and Company shall respond within thirty (30) days of County's request. Company's consent will not be unreasonably withheld. It is the intention of the Parties that the use of portions of the Hospital building that are not part of the Leased Premises in a manner that increases access to health care services for the residents of Gadsden County is encouraged so long as such uses are not directly adverse to the interests of Company.

*Section 12.2 Severability.* In the event any provision of this Amended Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof or such otherwise invalid provision under circumstances other than those under which it was determined to be invalid, except to the extent that such other provision is wholly dependent for its operation upon the part declared to be invalid, and to that end the provisions hereof are agreed and declared to be severable.



*Section 12.3 Amendments and Modifications.* This Amended Lease shall not be amended or modified except by a written instrument signed by the duly authorized representatives of each of the Parties hereto.

*Section 12.4 Captions.* The titles of articles, sections, subsections, or paragraphs herein are solely for the convenience of the Parties and shall not be used to explain, limit, expand, modify, simplify, or aid in the interpretation of the provisions of this Amended Lease.

*Section 12.5 Assignments.* Except as herein otherwise expressly provided, no party hereto may assign or otherwise transfer its rights or obligations hereunder without the prior written consent of the other Party hereto, which consent will not be unreasonably withheld. For purposes of this section, the sale, transfer, pledge or assignment of a membership interest or of a controlling equity ownership interest, such that the existing owner of either Party fails to maintain a majority of its voting interests, shall be deemed an attempted assignment.

*Section 12.6 Entire Agreement.* This Amended Lease constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and the transactions hereby contemplated. Any prior understandings, proposals, or representations of any kind shall not be binding upon either party except to the extent incorporated in this Amended Lease. As noted in section 3.1 above, except as otherwise specifically stated herein, the provisions of this Amended Lease supersede and replace the Initial Lease and the First, Second, Third, Fourth, Fifth, Sixth and Seventh Amendments to the Initial Lease. However, it is the intention of the Parties that as of the Commencement Date of this Amended Lease, the lease of the Leased Premises by County to Company shall continue uninterrupted. This Amended Lease is intended to merely modify, extend and renew the Initial Lease on the terms as stated herein as referred to in section 155.40(23), Florida Statutes (2019).

*Section 12.7 Governing Law.* This Amended Lease shall be governed by and construed in accordance with the Constitution, laws and regulations of the State of Florida without regard to provisions with respect to conflicts or choices of law.

*Section 12.8 Relationship of the Parties.* Nothing contained herein shall be deemed or construed by the Parties hereto, nor by any third party, to create any relationship (including the relationships of principal and agent or of partnership or of joint venture) other than the relationship of landlord and tenant between the Parties hereto.

*Section 12.9 No Third Party Beneficiaries.* This Amended Lease and the terms, covenants, agreements and other provisions set forth in this Amended Lease (collectively, the "Amended Lease Provisions") are for the sole and exclusive benefit of County and Company. No person, firm, company, partnership or other legal entity whatsoever (individually and collectively, a "Third Party") shall be a third party beneficiary with respect to this Amended Lease or any of the Amended Lease Provisions, and none of the Amended Lease Provisions shall inure to the benefit of any Third Party or create any rights against County or Company for the benefit of or enforceable by any Third Party.

*Section 12.10 Execution in Counterparts.* This Amended Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

*Section 12.11 Time of Essence.* The Parties hereto agree that time is of the essence with respect to performance of the obligations hereunder.

*Section 12.12 No Finders or Brokers.* Neither County nor the Company nor any of its Affiliates has engaged any finder or broker in connection with the transactions contemplated hereunder.

*Section 12.13 Memorandum of Amended Lease.* The Parties hereto agree to enter into a Memorandum of Amended Lease in a form reasonably acceptable to both Parties and appropriate for recordation.

*Section 12.14 Review of Lease.* Company and County acknowledge that each of them and their counsel have had an opportunity to review this Amended Lease.

*Section 12.15 No Merger.* The voluntary or other surrender of this Amended Lease by Company or the cancellation of this Amended Lease by mutual agreement of the Parties or the termination of this Amended Lease on account of Company's default will not work a merger, and will, at County's option, (a) terminate all or any subleases and subtenancies or (b) operate as an assignment to County of all or any subleases or subtenancies. County's option under this Section will be exercised by written notice to Company and all known sublessees or subtenancies in the Leased Premises or any part of the Leased Premises.

*Section 12.16 Attorneys' Fees.* Between the parties hereto and in connection with any interpretation, defense or enforcement of any matter arising out of or in any manner relating to this Amended Lease, the prevailing party shall be entitled to recover reasonable attorneys' fees and disbursements (including disbursements which would not otherwise be taxable as costs in the proceeding). In connection with any suit, action, or other proceeding, including arbitration or bankruptcy, arising out of or in any manner relating to this Amended Lease, the prevailing party shall be entitled to recover reasonable attorneys' fees and disbursements (including disbursements which would not otherwise be taxable as costs in the proceeding). All references in this Amended Lease to attorneys' fees shall be deemed to include all legal assistants' and paralegals' fees and shall include all fees incurred through all post-judgment and appellate levels and in connection with bankruptcy proceedings.

*Section 12.17 Effectiveness.* Notwithstanding any other provision hereof to the contrary, this Amended Lease shall not be legally effective and binding on the parties hereto until such time as all shall have been fully executed by all parties.

*Section 12.18 Confidentiality of Proprietary Information.* Except as provided in subsection 12.18(b), all properly designated information disclosed to County by Company and its affiliates shall be deemed to be "Proprietary Information".

(a) Company understands that County is legally required to abide by various public records and government in the sunshine laws, including, without limitation, F.S. §§ 119.07 and 286.011, as amended. County agrees that it shall abide by the confidentiality and other requirements of this Amended Lease, except as required by law or court order. It is noted that any portion of the Proprietary Information constituting trade secret information as defined by applicable Florida statute

is exempt from the public record laws to the extent such information is properly designated and otherwise meets applicable requirements for such information. In the event that County receives a request, pursuant to such public records or government in the sunshine laws, for the production of any Proprietary Information, County shall immediately notify Company of such request and will timely assert all exceptions to the production of such Proprietary Information or other information requested by Company that are reasonably available to County, and will use its best efforts to obtain, if reasonably necessary, a legally enforceable ruling supporting the non-production of such materials or information. Company may, at its own option and expense, prepare comments, submit information and/or intervene in any legal proceeding stating why the requested information is exempt from disclosure. County's obligation to enforce this provision in any legal proceeding regarding such information shall immediately terminate should Company choose not to intervene and affirmatively assert the trade secret or other confidential nature of such information; provided that in such event County shall furnish only that portion of the Proprietary Information that it is advised by a written opinion of its counsel is legally required.

(b) County shall use all reasonable efforts to protect the Proprietary Information received with the same degree of care used to protect its own Proprietary Information from unauthorized use or disclosure by its employees and Representatives, except that such Proprietary Information may be used or disclosed to its employees and Representatives as may be reasonably required to evaluate a possible transaction.

(c) It is understood that the term "Proprietary Information" does not include Information which:

- (1) is now or hereafter in the public domain through no fault of County;
- (2) prior to disclosure hereunder, is properly within the rightful possession of County;
- (3) is lawfully received from a third party with no restriction on further disclosure;
- (4) is obligated to be produced under applicable law or order of a court of competent jurisdiction, unless made the subject of a confidentiality agreement or protective order; or
- (5) has not been properly designated as "Proprietary Information" or as confidential as required by Florida law.

IN WITNESS WHEREOF, the parties hereto have caused this Amended Lease to be executed by its respective duly authorized officers as of the day and date first above written.

COUNTY:

Gadsden County Florida Board of Commissioners

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

COMPANY:

Tallahassee Medical Center, Inc. d/b/a Capital Regional Medical Center

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

Acknowledgement and Consent by Gadsden Hospital, Inc.

As referenced in the Recitals above, Gadsden Hospital, Inc. is a party to the Initial Lease. This Amended Lease is also hereby approved and executed by Gadsden Hospital, Inc. for the limited purpose of acknowledging and consenting to the removal of Gadsden Hospital, Inc. from the Amended Lease.

Gadsden Hospital, Inc.

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**EXHIBIT A – SCHEMATIC DRAWING OF LEASED HOSPITAL**



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GADSDEN COUNTY, FLORIDA

and

TALLAHASSEE MEDICAL CENTER, INC. d/b/a CAPITAL REGIONAL MEDIAL CENTER

**AMENDED AND RESTATED LEASE AGREEMENT**

Relating to Capital Regional Medical Center-Gadsden Memorial Campus

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## **LEASE AGREEMENT**

This Amended and Restated Lease Agreement ("Amended Lease") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2020, by and among TALLAHASSEE MEDICAL CENTER, INC. d/b/a CAPITAL REGIONAL MEDICAL CENTER, a Florida for profit corporation (referred to as the "Company") and GADSDEN COUNTY, FLORIDA, a political subdivision of the State of Florida (referred to as the "County") .

### **Recitals**

WHEREAS, in March 2010, the County, the Company and Gadsden Hospital, Inc. ("GHI") entered into a Lease Agreement for a hospital facility now known as Capital Regional Medical Center-Gadsden Memorial Campus located at 23186 Blue Star Highway, Quincy, Florida 32353 (the "Hospital") (which Lease Agreement is hereafter referred to as "the Initial Lease"); and,

WHEREAS, the County, the Company and GHI entered into First, Second, Third, Fourth, Fifth, Sixth and Seventh Amendments to the Initial Lease on or about March 1, 2013, December 1, 2013, February 15, 2016, July 16, 2019, August 13, 2019, October 15, 2019 and December 31, 2019 respectively; and,

WHEREAS, the initial term of the Initial Lease will end in June 2020; and,

WHEREAS, it is no longer necessary for GHI to remain a Party to the Initial Lease or this Amended and Restated Lease Agreement; and

WHEREAS, GHI has consented to the removal of GHI as a Party to the Initial Lease and this Amended and Restated Lease Agreement; and

WHEREAS, the County and the Company desire to continue the relationship between the parties under this Amended and Restated Lease Agreement (hereafter referred to as "the Amended Lease"); and

WHEREAS, Company is a Florida corporation, and the operator and license holder of Capital Regional Medical Center ("CRMC"), located at 2626 Capital Medical Boulevard, Tallahassee, Florida, with 266 licensed beds; and,

WHEREAS, the County continues to have the authority and desires to continue to lease the Hospital and the "Leased Premises" as hereinafter defined, to Company, on the terms and conditions herein set forth and Company desires to continue to lease said Leased Premises, on the terms and conditions herein set forth; and,

WHEREAS, this Amended Lease shall replace and supersede the Initial Lease including the subsequent amendments without any interruption in the relationship between the Parties or the operation of the Hospital;

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and agreements herein, the Company and the County do hereby covenant and agree as follows:

**ARTICLE I.**  
**Definitions**

*Section 1.1 Definitions.* The following terms are defined terms under this Amended Lease and shall have the following meanings given to them, unless the context and use clearly indicates a different intent and meaning:

*"Added Assets"* means any properties, fixed equipment, moveable equipment, Replacement Equipment, real property and improvements and renovations, Capital Expenditures, inventories and other assets developed, contributed, constructed, purchased, owned, operated or leased by Company or any other Affiliate of Company, or any interest held by Company, any other Affiliate of Company in any other entity, business, assets or property developed, purchased, contributed, owned, operated or leased, in and for the exclusive use by Company, in service of, in support of and/or in connection with the operations of the Hospital, other than the assets owned by County prior to the Commencement Date of the Initial Lease or thereafter purchased or acquired by County and used in the operation of the Hospital, including County Equipment. However, Added Assets shall include only those assets dedicated to use solely in the operation of Hospital, and shall exclude any assets owned or acquired by Company that are shared or utilized by Company or its Affiliates in the operation of other hospitals or health care facilities; including, but not limited to, computers, software, billing, records, etc., in support of multiple business operations.

*"Affiliate"* means, with respect to any Person (the "first Person"), each other Person who is, directly or indirectly, controlled by, in control of, or under common control with such first Person. Control of a Person means the power to direct the affairs of such Person by reason of ownership of voting stock, contract, or otherwise.

*"Capital Expenditures"* means any expenditure in excess of Fifty Thousand Dollars (\$50,000) by Company normally capitalized under generally accepted accounting principles consistently applied, and in accordance with Company's customary accounting principles and procedures, including but not limited to any fixed or moveable equipment or physical plant renovations or improvements.

*"Company"* means Tallahassee Medical Center, Inc., a Florida for profit corporation, and/or its permitted Affiliates.

*"County"* means Gadsden County, Florida, a political subdivision of the State of Florida.

*"County Equipment"* means the fixed and moveable equipment used or to be used in operation of the Hospital now owned or leased by County and located or to be located in the Leased Premises or to hereafter be acquired by County through lease or purchase and located or to be located in the Leased Premises, including as required pursuant to the terms of this Lease agreement. To the extent any County Equipment is purchased from County by Company, it would no longer be considered County Equipment.

"Code" means the federal Internal Revenue Code of 1986, as amended, or the provisions of any successor code with respect to the federal taxation of income of individuals, corporations and other organizations, as applicable.

"Environmental Laws" means all applicable federal, state, regional, county, municipal, and local laws, regulations, compacts, rules and policies, and the common law relating to the management, use, refinement, handling, treatment, storage, remediation, investigation, production, manufacture, transportation, disposal, emission, discharge, release or threatened release of Materials of Environmental Concern, or otherwise relating to protection of human or ecological health, or protection of the environment (including, without limitation, ambient air, surface water, groundwater, land surface, and subsurface strata), as the same may be amended or modified (and including laws enacted in the future as may pertain to the operation and maintenance of health care facility hereunder).

"Hazardous Material" means:

(a) "hazardous substances" or "toxic substances" as those terms are defined by the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. secs. 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. secs. 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. secs. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. secs. 1251 et seq.), the Clean Air Act (42 U.S.C. secs. 7401 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. secs. 2601 et seq.), and the Occupational Safety and Health Act (29 U.S.C. secs. 651 et seq.), as these laws have been amended and any other federal, state, or local statute, law, ordinance, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning hazardous materials, waste, or substances now or at any time hereafter in effect (collectively, "hazardous materials laws");

(b) "hazardous wastes," as that term is defined by the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. sec. 6902 et seq., as amended to this date and as amended after this date;

(c) any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste substance or material, all as amended to this date or as amended after this date;

(d) crude oil or any fraction of it;

(e) any radioactive material, including any source, special nuclear, or by-product material as defined at 42 U.S.C. sec. 2011 et seq., as amended to this date or as amended after this date;

(f) asbestos in any form or condition; and/or

(g) polychlorinated biphenyls (PCB's) or substances or compounds containing PCB's.

"HIPAA" refers to the Health Insurance Portability and Accountability Act of 1996 and as amended.

"Hospital" means Capital Regional Medical Center-Gadsden Memorial Campus, located at 23186 Blue Star Highway, Quincy, Florida, and on the leased space as set forth on Exhibit A, comprised of approximately forty-one thousand one hundred thirty-eight (41,138) gross square feet more or less, attached hereto and made a part hereof and referred to as the "Site", plus all buildings, improvements and fixtures existing or to be constructed on the Site and any machinery, equipment and other property (i) owned or leased by the County and located on the Site at the time of delivery of the Initial Lease, or (ii) owned by the County and thereafter located on the Site.

"Amended Lease" means this Amended and Restated Lease Agreement and any future amendments and supplements hereto.

"Lease Term" or "Term" means the duration of the leasehold estates created in this Amended Lease.

"Lease Year" means initially the time period commencing on the Commencement Date and ending on September 30, 2019, and thereafter, the period of time commencing on October 1 of each year and ending on September 30 of the next year.

"Leased Land" means the real estate and interests in real estate described in Exhibit A attached hereto and by reference made a part hereof, together with the buildings, additions, improvements and facilities thereon and appurtenances thereto, including, but not limited to all other rights and easements appurtenant to the land, the building, and other improvements such as parking lots and common areas. However, the Leased Land does not include that part of the building or the land underneath that part of the building that is not included as part of the Hospital as set forth in Exhibit A.

"Leased Premises" means the Hospital and Leased Land.

"Materials of Environmental Concern" means any toxic or hazardous substance, toxic or hazardous waste, or pollutants, including, without limitation, asbestos, radon, PCBs, petroleum products and byproducts, substances defined as "hazardous substance," "toxic substance," "extremely hazardous substance," "hazardous waste," "hazardous air pollutant," or any similarly identified substance or mixture, in or pursuant to any federal or state law.

"Permitted Encumbrances" means, as of any particular time (i) this Amended Lease, (ii) easements of record as of the date hereof, and (iii) such defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as may exist with respect to the Leased Premises so long as no one or more of them, alone or in combination, materially affects, impairs or interferes with Company's use of the Leased Premises for the purposes hereby contemplated.

"Person" means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, tribunal, court, governmental agency, governmental authority, governmental instrumentality or other entity or association.

“*Replacement Equipment*” means any equipment, furnishings or fixtures which is placed or installed in the Hospital by Company to replace then-existing equipment, furnishings or fixtures which was removed by Company or subject of damage or destruction during the term of this Amended Lease.

“*Service Area*” means Gadsden County, Florida, and all counties contiguous thereto served by the Hospital.

*Section 1.2 Alternative Forms of Defined Terms.* The use of the singular form of any word herein shall also include the plural form and vice versa. The use of the neuter form of any word herein shall also include the masculine and feminine forms, and the masculine form shall include the feminine and neuter forms and vice versa.

## **ARTICLE II. Demising Clause**

In consideration of and subject to the rentals and other terms and conditions herein specified, and otherwise in accordance with the provisions of this Amended Lease, County hereby demises, rents and leases the Leased Premises to Company. Company hereby rents and leases the Leased Premises from County subject to the terms and conditions herein.

## **ARTICLE III. Commencement Date; Delivery and Acceptance of Possession; Lease Term; and Surrender of Possession**

*Section 3.1 Effective Date.* This Amended Lease shall become effective on the date when signed by the last of the Parties to execute this Amended Lease (hereafter referred to as “the Commencement Date”). Except as otherwise specifically stated herein, the provisions of this Amended Lease supersede and replace the Initial Lease and the First, Second, Third, Fourth, Fifth, Sixth and Seventh Amendments to the Initial Lease. However, it is the intention of the Parties that as of the Commencement Date of this Amended Lease, the lease of the Leased Premises by County to Company shall continue uninterrupted. This Amended Lease is intended to merely modify, extend and renew the Initial Lease on the terms as stated herein as referred to in section 155.40(23), Florida Statutes (2018).

*Section 3.2 Delivery and Acceptance of Possession.* As of the Commencement Date of the Initial Lease, Company has possessed the Leased Premises pursuant to the Initial Lease and has continuously possessed the Leased Premises through and including the Commencement Date of this Amended Lease. The County covenants and agrees that Company shall have sole and exclusive possession of the Leased Premises subject however to County’s rights and obligations to enter and make necessary repairs or improvements pursuant to the County’s obligations set forth herein.

*Encumbrances.* To the extent, if any, any portion of the Leased Premises is subject to the indebtedness of the County, Company shall be provided a non-disturbance agreement from the lender acceptable to Company upon request by the Company. County shall pay the costs of documentary

stamps, transfer taxes and recording fees in connection with the recording of a short form memorandum of lease.

*Liabilities.* Except as Company may otherwise elect, Company will not assume and County will remain responsible for, and indemnify Company against, any and all liabilities, indebtedness, commitments or obligations of any kind whatsoever, which relate to the assets of the Leased Premises that belong to County. Except as County may otherwise elect, County will not assume and Company shall remain responsible for, and indemnify County against, any and all liabilities, indebtedness, commitments or obligations of any kind whatsoever, which relate to the assets of the Leased Premised that belong to Company. This indemnification provision as it relates to the County is not intended to extend any further than allowed by Section 768.28, Florida Statutes or any other applicable provision of Florida law.

*Section 3.3 Lease Term.*

- (a) Initial Term. This Amended Lease shall have an initial term of fifteen (15) years beginning on the Commencement Date and ending on the last day of the month, fifteen (15) years after the Commencement Date. Company agrees that it will provide a report to the County every three (3) years which will include but not be limited to a comprehensive evaluation of the state of the Hospital, the need to expand service offerings including but not limited to the potential for adding inpatient services and the recruitment of physicians to support inpatient services.
- (b) Renewal Terms. The term of this Amended Lease shall automatically be renewed for up to two (2) additional consecutive terms of five (5) years; unless, however, either Party delivers written notice to the other Party that it will not renew at least (12) months prior to the end of the term then in effect by giving written notice thereof to the other Party.

*Section 3.4 Surrender of Possession Upon Expiration or Termination; Purchase of Added Assets; Hold Over Tenancy.*

- (a) Upon the expiration or termination of this Amended Lease as provided herein, the Company shall promptly surrender possession of the Leased Premises to County in as good condition and state of repair as on the Commencement Date, excepting modifications, additions or changes to the Leased Premises completed in accordance with this Amended Lease and excepting further ordinary wear, tear, depreciation, obsolescence and damages resulting from events or causes beyond the Company's reasonable control. In addition, Company will transfer to County the Added Assets, associated with Company's operation of the Leased Premises necessary for County to continue to operate the Leased Premises, upon County's payment to Company for the purchase of the Added Assets.
- (b) Upon termination or expiration of the Amended Lease, County shall purchase from Company all of the Added Assets by payment to Company of an amount to be agreed upon that is equal to the then current fair market value of the assets and improvements

added by Company through Capital Expenditures pursuant to Section 5.3(i) and otherwise in connection with the operation of the Hospital, such fair market value to be determined in accordance with the Company's customary accounting policies and procedures using the estimated useful lives of such assets without taking into account the term of the Amended Lease (the "Fair Market Value"). Should this Amended Lease be terminated by either Party or if it expires, then Company shall accept payment of the Fair Market value of the Added Assets over a period of up to thirty-six (36) months if so requested by County with interest calculated at the prevailing monthly London Interbank Offered Rate ("LIBOR").

- (c) If the Parties have not agreed in writing as to the Fair Market Value of the Added Assets within thirty (30) days after the expiration or termination of this Amended Lease, each party shall, within forty-five (45) days after the expiration or termination of this Amended Lease, designate an independent health care appraiser ("Health Care Appraiser") and shall notify the other party of the Health Care Appraiser so selected. Within thirty (30) days thereafter, the two Health Care Appraisers so selected shall determine the Fair Market Value of the Added Assets. In the event that the two Health Care Appraisers cannot agree on such determination by the end of the thirty (30)-day period, they shall select a third Health Care Appraiser within fifteen (15) days after the expiration of such thirty (30)-day period, who shall determine the Fair Market Value within thirty (30) days thereafter. The Fair Market Value shall be that determined by the two original Health Care Appraisers if they agree or that determined by the third Health Care Appraiser if the two original Health Care Appraisers do not agree. Each party shall bear the cost of the Health Care Appraiser selected by it, and, if necessary, share equally the costs of the third Health Care Appraiser. The County shall pay the costs of any title insurance and surveys and closing costs which County may, in its sole discretion, require in connection with the purchase of the Added Assets. Each party shall be responsible for the fees of its respective counsel.
- (d) In the event, however, that County shall permit the Company to hold over with respect to the Leased Premises after expiration of the Term of this Amended Lease, such holding over shall constitute a tenancy from month to month only with respect to the Leased Premises and shall not be considered as a renewal or extension of this Amended Lease; and, during such month to month tenancy, the Company shall pay to County the Base Rent and Additional Consideration for the Leased Premises in effect immediately prior to the expiration of such Term on the same payment schedule as provided for herein; and for the period of such tenancy, the Company and the County shall be bound by all of the provisions of this Amended Lease insofar as, and to the extent that, the same may be pertinent.
- (e) Upon termination or expiration of the Amended Lease, Company agrees to fully cooperate with County and shall convey, upon approval by the Florida Agency for Health Care Administration ("AHCA"), all necessary licenses, certificates, permits and other documents necessary for County, or its designee to operate Hospital as a licensed Florida hospital. County shall have the principal obligation and responsibility for applying for and obtaining all necessary governmental approvals to authorize the



conveyance from Company to County of licenses, certificates, permits and other documents necessary to license and operate the hospital. Company's cooperation shall include, but not be limited to assisting County with the preparation and submission of applications with governmental authorities including, without limitation, AHCA, and obtaining the approvals thereof for all necessary or appropriate licenses, certifications, permits and similar authorizations, including, but not limited to, change of ownership/license holder, Medicare and Medicaid certifications, and the transfer or approval of all other federal, state, and local permits and licenses. It is the intent of the Parties that if Company fails to convey all such licenses, certificates, permits and other documents necessary to license and operate the hospital, then County, or its designee will be entitled to immediate and appropriate judicial relief and Company hereby consents to a court-ordered transfer of such items. County shall be responsible for the costs of such licenses, certificates, permits and other governmental approvals but Company shall be liable for County's attorney's fees and costs for any judicial action to compel such conveyances, upon any unreasonable refusal of Company to do so. It is the further intent of this paragraph to provide for the orderly return of Hospital to County upon termination or expiration of the Amended Lease as required by Section 155.40(2)(d), Florida Statutes (2018).

#### **ARTICLE IV.**

#### **Rent and Additional Consideration and Terms**

*Section 4.1 Rents Payable.* During each Lease Year of the Amended Lease Term, Company shall pay as rent to the County the following:

*Base Rent.* During the period from the Commencement Date through the end of the Lease Term unless abated or diminished as otherwise provided in this Amended Lease, Company shall pay to County Base Rent at the rate of Two Hundred Thousand Dollars (\$200,000) per annum, payable in equal monthly installments of Sixteen Thousand Six Hundred Sixty Six and 67/100 Dollars (\$16,666.67) each on the first day of each calendar month during the balance of the Lease Term hereof; provided, however, that such monthly installments shall be prorated on a per diem basis for any partial calendar months occurring within the Lease Term of this Amended Lease; and further provided that the Base Rent shall be increased as set forth further below. Additionally, Company shall pay to County, along with and in addition to each monthly installment of Base Rent, the sales or privilege tax required under applicable law, including but not limited to Florida Statutes Section 212.031 and any amendments or replacements thereof. Such rent shall be paid by check to the following address:

Gadsden County Clerk  
9-B East Jefferson Street  
Quincy, Florida 32351

or to such other address as directed by County.

The Base Rent shall be increased by five percent (5%) over the then-current rate every three (3) years beginning on the first day of the first month following the third (3<sup>rd</sup>) anniversary of the Effective Date.

*Section 4.2 Additional Consideration.* As additional consideration, except as otherwise provided herein, Company shall:

- (a) During the Amended Lease Term, pay all costs and expenses of the operation and maintenance of the Leased Premises when and as the same shall be due and payable.
- (b) County and Company agree that this Amended Lease constitutes a “triple net” lease. Except as otherwise stated herein, during the term of the Amended Lease, Company shall be responsible for routine maintenance and repair of the Leased Premises, and will be responsible for maintaining the premises and equipment in the condition in which it received it, normal wear and tear excepted. Except, however, County shall be responsible for all structural defects and all defects in the Hospital’s mechanical, electrical, plumbing and HVAC systems, except that Company shall be responsible, at its sole expense, for correction or repairs of structural defects and defects in the Hospital’s mechanical, electrical and HVAC systems caused as a result of damage or modifications made by Company without the knowledge and consent of County or as a result of misuse or neglect by Company, its agents, employees, invitees, visitors or contractors. Routine maintenance and minor repairs of the Hospital building and mechanical, electrical, plumbing and HVAC systems (including routine HVAC filter cleaning and replacement) shall be performed or arranged by Company at Company’s expense. Company will maintain Hospital in a clean and sanitary condition that meets or exceeds all applicable regulatory requirements. Company will also be responsible for keeping the exterior of the Hospital building in a clean, painted and attractive condition. Company will maintain in good order, condition and repair all exterior signs on the Hospital, the Leased Premises or on the land immediately adjacent thereto that advertise the location or presence of the Hospital.
- (c) During the Amended Lease Term, pay, as part of the cost of operating and maintaining the Leased Premises, all taxes and assessments, if any, that may be levied against the same; provided, however, that the County shall cooperate with Company in any manner reasonably requested by Company to assist Company in its efforts to take steps that may reasonably be required at any time and from time to time for the purpose of establishing and continuing to maintain, if practicable, an exemption of the Leased Premises and any Added Assets from taxation, or reduction in taxation. However, all costs of establishing or maintaining any exemptions or reductions in taxes, including costs reasonably incurred by County, will be paid by Company.
- (d) During the Lease Term, County will not be in default under this Amended Lease or be liable to Company or any other person or entity for direct, special, incidental, indirect or consequential damage or otherwise for any failure to supply any utilities, services or maintenance except for those maintenance obligations expressly assumed by County as set forth herein. “Failure to supply” shall include but not be limited to

surges, interruptions, stoppage or any other failure in the quantity or quality of any utilities or services.

In the event the Company fails to make any of the payments required in this Section 4.2, the item or installment so in default shall continue as an obligation of the Company until the amount in default shall have been fully paid and such payment obligation shall survive the expiration of the scheduled Lease Term or the termination hereof by the County for a default by Company.

*Section 4.3 Governmental Approvals.* Consistent with the terms of Section 4.3 of the Initial Lease, the Company will continue to maintain the license for the Hospital issued by AHCA in a manner that assures that, upon termination of the Amended Lease, the Hospital can be returned to Gadsden County, or its designee, as a separately licensed acute care general hospital. Company shall pay for the costs of the licenses, certifications, permits and similar authorizations necessary for Company to open and operate Hospital.

*Section 4.4 Inpatient Beds.* Company shall license and operate the Hospital as a provider-based facility of Capital Regional Medical Center (“CRMC”) with four (4) licensed general inpatient acute care beds, laboratory, diagnostic imaging, pharmacy and an emergency department. Company has entered into an agreement with AHCA to suspend or place the inpatient beds in a non-operational status and maintain the four licensed beds in such status until notice is provided to County and AHCA that the beds will be placed into licensed operation. Any decision to construct, build out, license, and operate any additional inpatient beds is solely and exclusively within the discretion of Company, although the County has the right to approve or deny any such capital project request pursuant to section 5.3 (i) herein. The Parties acknowledge that the Hospital has the capability of being expanded to between 10 and 16 beds and that, as of the Commencement Date of this Amended Lease there is currently space in the portions of the Hospital building that are not subject to this Amended Lease to expand further subject to terms to be negotiated between County and Company.

*Section 4.5 Hospital Equipment.* Prior to the Commencement Date of the Initial Lease, County purchased or leased all equipment necessary to initially equip the Hospital to initiate operations on the Initial Lease Commencement Date. If, during the term of the Amended Lease, Company determines that additional or replacement equipment is necessary for the customary operation of the Hospital, it shall be the responsibility of the Company to lease or purchase such equipment as it deems necessary. During the term of the Amended Lease, Company shall be responsible for maintenance and repair of all equipment, both existing and as may be purchased in the future, to continue to operate Hospital in a high-quality manner and as required by applicable regulatory requirements.

*Section 4.6 Indigent Care.* County and Company shall comply with all applicable requirements of Section 155.40, Florida Statutes. During the Term of this Amended Lease, Company shall provide for the continued treatment of indigent patients pursuant to the Florida Health Care Responsibility Act and pursuant to Chapter 87-92, Laws of Florida, in compliance with Section 155.40(2)(e), Florida Statutes (2019). In the event Company receives annually more than \$100,000 in revenues from County for Hospital operations, Company shall be accountable to the County with respect to the manner in which the funds are expended, in compliance with Section 155.40(18), Florida Statutes (2018). In the event this statute is amended during the term of this Amended Lease,

then this Section 4.7 shall be subject to modification in order to maintain consistency with the requirements of Florida Law.

*Section 4.7 No Transfer of Governmental Functions.* This Amended Lease transaction is not and shall not be construed as: a transfer of a governmental function from the County to Company; constituting a financial interest of the County in the Company; or as making the Company an integral part of the County's decision-making process. Further, under the terms of this Amended Lease, the Company is not, and shall not be construed to be, "acting on behalf" of the County as that term is used in statute. This Amended Lease agreement does not require Company to comply with the requirements of chapter 119 and section 286.011, Florida Statutes. The County and the Company shall not commingle any of their funds in any account maintained by either of them. Except as otherwise provided by law, Company is not allowed to participate, except as a member of the public, in the decision-making process of the County. The County is not entitled to receive any revenues from the Company, except for rental or any taxes or administrative fees due under the Amended Lease, and the County is not responsible for the debts or other obligations of the Company.

## **ARTICLE V.**

### **Covenants of County; Covenants of Company and Operation of Hospital**

*Section 5.1 Covenants of County.* The County represents, warrants, covenants and agrees, except as set forth below, that:

- (a) Organization. The County is a political subdivision duly organized and validly existing under the laws of the State of Florida. County has the power and authority to enter into this Amended Lease acting by and through its duly authorized officials.
- (b) Unencumbered Title. Other than Permitted Encumbrances, County hereby represents that County has good and marketable title to all property and assets to be leased hereunder subject to no mortgage, pledge, lien, conditional sale agreement, encumbrance or charge.
- (c) Necessary Property. County represents, warrants, covenants and agrees that as of the Commencement Date all Leased Premises are in good condition and repair and suitable for their intended purposes, and in compliance with all applicable codes and laws, including, but not limited to, Environmental Laws and ADA access requirements, except as otherwise stated in this Amended Lease. Company shall landscape the grounds of the Leased Premises in a manner appropriate for a rural hospital facility and shall provide regular maintenance of the landscaping during the term of this Amended Lease. County shall maintain all parking areas and driveways in commercially appropriate condition during the term of this Amended Lease. With respect to all portions of the Hospital site that are not subject to this Amended Lease, County shall assure access to Company to the extent reasonably necessary for the appropriate operation of the Hospital; including, but not limited to, the provision of adequate parking in the amount that exists as of the Commencement Date.
- (d) No Breach of Statute or Contract. County is not aware of any default under or in violation of, any applicable statute, law, ordinance, decree, order, rule, regulation of

any governmental body, or the provisions of any franchise or license, or in default under, or in violation of, any provision of its governing statutes, any promissory note, indenture or any evidence of indebtedness or security therefore, lease, contract, purchase or other commitment or any other agreement by which it is bound which may result in a material adverse effect on the business or condition, financial or otherwise, of the Leased Premises. The consummation of this Agreement and the transactions contemplated hereby will not constitute or result in any such default, breach or violation, and no domestic governmental permits, consents or approvals are necessary to implement the lease and operational transactions contemplated hereby.

- (e) Litigation. There is no suit, claim, action or proceeding now pending or, to the knowledge of County, threatened against County before any court, administrative or regulatory body, or any governmental agency or any grounds therefore which may result in any judgment, order, decree, liability or other determination which will, or could, have any adverse effect upon the business or condition, financial or otherwise, of the Leased Premises. No such judgment, order or decree has been entered which has, or will have, such effect. There is no claim, action or proceeding now pending or to the knowledge of County threatened before any court, administrative or regulatory body, or any governmental agency, which will, or could, prevent or hamper the consummation of the lease and operational transactions contemplated by this Amended Lease.
- (f) Comments and Approvals. No consent or approval by County is necessary to the continued lease and grant of use by County to Company hereunder of all the rights, contracts, properties, franchises, licenses, interests and business of the Leased Premises and upon the consummation of this Amended Lease Company will continue to have the right of use of all of the rights, properties, franchises, interests and business of the Leased Premises as set forth herein. County has full power and authority to enter into this Amended Lease and to perform any of its obligations hereunder, and no other or further consent, approval or action, statutorily or otherwise, is required to be taken or obtained by County in order to perform all its obligations hereunder and to effect the lease and right of use of assets to Company pursuant to, and in the manner contemplated by, this Amended Lease.
- (g) Right to Make Repairs, Etc. Except as herein otherwise expressly provided, the Company shall have the right from time to time to make repairs, restorations, replacements, additions, alterations and changes, in or to the Leased Premises. Any such repairs, restorations, replacements, additions, alterations and changes shall be made in conformance with all applicable codes, ordinances, licensure and other necessary regulatory requirements.
- (h) No Breach. The execution and delivery of this Amended Lease will not result in a breach of any of the terms of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other agreement or instrument to which either the County is a party or by which it or any of its property is bound or its bylaws or any of the constitutional or statutory rules or regulations applicable to its property.

- (i) Review of Articles of Incorporation. Pursuant to Section 155.40(2)(a), Florida Statutes (2019), Company's Articles of Incorporation have been reviewed and approved by County.

*Section 5.2 Covenants of Company.* Company represents, warrants, covenants and agrees that:

- (a) Organization. The Company is a for profit corporation organized under the laws of the State of Florida and is in good standing and authorized to transact business under the laws of the State of Florida and is empowered by its Board of Directors to enter into and be bound by this Amended Lease.
- (b) Occupancy. The Company shall use and occupy the Leased Premises and shall exclusively administer, operate and maintain the same as a hospital without discrimination as to race, creed, color, sex, national origin or disability. Throughout the term of this Amended Lease, Company shall operate Hospital as an acute care hospital. Company shall operate the Hospital's emergency department twenty-four hours per day/seven days per week/ three hundred and sixty five days per year.
- (c) Compliance with Laws. The Company shall administer, operate and maintain the Leased Premises in accordance with the terms of this Amended Lease; and, in the discharge of its obligations hereunder, shall comply in all material respects with all present and future applicable laws, ordinances, rules, regulations, requirements, and orders of all governmental authorities or agencies having jurisdiction over the Leased Premises or the operations of the Company; provided, however, that nothing herein contained shall require the Company to comply with, observe, and conform to any such law, ordinance, rule, regulation, requirement or order so long as the validity thereof or the applicability thereof shall be contested in good faith. Except as otherwise expressly provided herein, all costs of administration, operation, and maintenance of the Leased Premises shall be the exclusive obligation of the Company and shall be discharged by the Company at its sole expense.
- (d) Information. Upon termination of this Amended Lease for any reason, Company will, within not less than two hundred seventy (270) days prior to the termination of the Amended Lease, provide County with such information as County may reasonably request to enable County to prepare a statement of financial condition for submission of request for bids or to otherwise lease the Leased Premises to a third party.
- (e) Authority to Enter Amended Lease. Company has the full right, power and authority to enter into and perform its obligations under this Amended Lease. This Amended Lease does not conflict with, nor violate any existing agreements to which Company is a party, and all consents and approvals necessary for Company to enter into this Amended Lease have been obtained. Execution of this Amended Lease will not cause a default of any agreement to which Company is a party.

- (f) Litigation. There is no suit, claim, action or proceeding now pending or, to the knowledge of Company, threatened against Company before any court, administrative or regulatory body, or any governmental agency, nor are there any grounds which may result in any judgment, order, decree, liability or other determination which will, or could, have any adverse effect upon the business or condition, financial or otherwise, of the Leased Premises. No such judgment, order or decree has been entered which has, or will have, such effect. There is no claim, action or proceeding now pending, or to the knowledge of Company threatened, before any court, administrative or regulatory body, or any governmental agency, which will, or could, prevent or hamper the consummation of the Amended Lease and operational transactions contemplated by this Amended Lease.

*Section 5.3 Operation of Hospital.*

- (a) Use of Leased Premises and Additional Operating Capital. In connection with its discharge of its responsibilities under this Amended Lease, the Company shall have the right to use and occupy the Leased Premises for lawful purposes only and only for the purposes set forth herein. Company may, at its own expense, from time to time provide such additional operating capital as may be needed to discharge its responsibilities and obligations hereunder. Company shall name and use the name of the Hospital in a manner that either includes the words “Gadsden Memorial Hospital” or other words that identify the Hospital with Gadsden County.
- (b) Compliance with laws, regulations and accreditations. The Company shall conduct all activities and operations of the Leased Premises in compliance in all material respects with the requirements, standards, and conditions set forth in all applicable federal, state, county and local statutes, orders, approvals, permits, registration, zoning or land use requirements and restrictions, variances, licenses, accreditations, rules and regulations, including, but not limited to, Medicare/Medicaid and other federal health care programs, and Environmental Laws. Company shall, at all times during this Amended Lease, maintain the status of the Hospital as a Medicare and Medicaid provider.
- (c) Company’s Obligations with Respect to Environmental Laws. Company and the Leased Premises will be kept in compliance with all Environmental Laws. All governmental permits relating to the use or operation of the Leased Premises required by applicable Environmental Laws will be obtained by Company and will be kept in effect during the term of the Amended Lease, and Company will comply with them. Except as otherwise provided in this subsection, Company will not permit to occur any release, generation, manufacture, storage, treatment, transportation, or disposal of Hazardous Material on, in, under, or from the Leased Premises. Notwithstanding the foregoing, however, the Parties acknowledge that Company operates a hospital, and that in the ordinary course of operation, Company, in compliance with all applicable Environmental Laws and other requirements, regularly (i) uses, stores, transports and disposes of Hazardous Materials, including radioactive materials, for medical procedures, and (ii) generates material quantities of biohazardous and radioactive

wastes as the by-product of such medical procedures, and (iii) uses, stores, transports, and disposes of hazardous materials for purposes of cleaning, disinfecting, maintaining and repairing the Hospital (all of the items described in clauses (i) through (iii) being collectively referred to as the “Permissible Hazardous Material”). The Parties agree that all such Permissible Hazardous Material may be used in the operation of Company’s business, and those operated by Company’s agents, employees, contractors, subcontractors and consultants, provided that all such Permissible Hazardous Material is used, stored, transported and disposed of in full compliance with all applicable Environmental Laws and other regulatory requirements. Company and County will immediately notify each other, in writing, if either of them has or acquires notice or knowledge that any Hazardous Material, including Permissible Hazardous Material, has been or is threatened to be released, discharged, disposed of, transported, or stored on, in, under, or from the Leased Premises in violation of Environmental Laws or other regulatory requirements; as the result of any act or omission of Company or County, as the case may be, their respective employees, contractors or invitees. If any Hazardous Material, including Permissible Hazardous Material, is found on the Leased Premises in violation of Environmental Laws or other regulatory requirements by reason of any such action or omission, then the party responsible for the release, discharge, disposal or transportation of such Hazardous Material, at its own cost and expense, will immediately take such action as is necessary to detain the spread of and remove or contain the Hazardous Material to the reasonable satisfaction of the other party and the appropriate governmental authorities. Notwithstanding any provision of this Amended Lease to the contrary, however, Company shall not be responsible or liable for compliance with any Environmental Laws with respect to the Premises to the extent accruing, or attributable to the period prior to the Commencement Date of the Initial Lease.

- (d) Company to pay or discharge certain liabilities. The Company shall pay or discharge when due all liabilities and obligations incurred by the Company in operation and maintenance of the Leased Premises from and after the Commencement Date until expiration or termination of this Amended Lease. Such obligations shall continue after the termination of this Amended Lease as to any liabilities and obligations incurred during the term of the Amended Lease but not discovered or matured until thereafter.
- (e) Company to perform certain contracts and commitments. The Company shall perform in all material respects all contracts and commitments made after the Commencement Date in the ordinary course of its operation of the business of the Hospital and does hereby indemnify the County against all liabilities under such contracts arising during the term of this Amended Lease.
- (f) Company responsible for non-discriminatory employment. The Company shall have the sole responsibility for establishment and enforcement of uniform non-discriminatory employment practices regarding all employees of the Hospital, and the Company shall indemnify the County against all liabilities which may be imposed



upon or claimed against the County arising, directly or indirectly, because of the Company's establishment or enforcement of such personnel practices and procedures from and after the Commencement Date.

- (g) Company to manage, administer and govern the Hospital. Except as provided in this Amended Lease, the County reserves no power or authority with respect to the operation of the Hospital by the Company and activities incident thereto, it being the intention of the Parties hereto that so long as the Company shall duly and faithfully observe and perform all of the terms, covenants, provisions and agreements of this Amended Lease, the Company shall manage, administer and govern the Hospital in its activities and affairs on the continuing day-to-day basis, including matters relating to the medical staff and other functions customarily conducted or pursued by the independent managing and governing authority of a private hospital.
- (h) Maintenance and Repair. During the term of the Amended Lease, Company shall be responsible for maintenance and repair of the Leased Premises as set forth in paragraphs 4.2(b) and 4.5 above.
- (i) Capital Projects. With respect to Capital Expenditures subject to purchase by County from Company as Added Assets at Lease termination, Company shall notify County of the need for capital improvements in excess of Fifty Thousand Dollars (\$50,000.00) including, but not limited to the need to build out additional bed and program space. In determining whether any Capital Expenditure or improvement has a value in excess of Fifty Thousand Dollars (\$50,000), any Capital Expenditure or improvement commenced or purchased during any consecutive three-month period that is for a similar purpose or function within the Hospital shall be aggregated. County shall either approve or deny a request to fund a capital improvement request from Company within thirty (30) days of receipt of such request. If County denies a capital improvement request, or cannot provide funding within a reasonable time frame acceptable to Company, Company may fund such capital improvements without approval of County. Company shall not expand the footprint of the current structure in which the Hospital is housed without prior express approval of County. Company shall reasonably evaluate and respond to any requests from County to add beds or services; but shall have no obligation to commit to or make any requested expansion. This provision regarding request by the Company to fund Capital Projects or Capital Expenditures does not apply to the purchase, repair or replacement of Hospital equipment. That responsibility and associated costs is an obligation of Company as set forth in section 4.5 above.
- (i) Encumbering, Subleasing and Assignment. Except as set forth herein, the Company shall not encumber by mortgage, deed of trust, or any other instrument, its leasehold interest and estate in the Leased Premises without the prior written consent of the County. In no event shall any mortgage or security interest extend to or affect the fee, the reversionary interest, or the estate of the County in and to the Hospital without the prior written consent of the County. The Company shall not sublease the Leased

Premises or any part thereof or assign this Amended Lease without having obtained in each case the prior written consent of County, except that the prior consent of County shall not be required with respect to (i) an assignment to any other Affiliate of Company or (ii) sublease for patient or employee convenience activities such as, but not limited to, gift shops, snack shops, child care, flower shops, counseling services, or for other services related to the operation of the Leased Premises as a hospital; provided, however, no such transfer, assignment or sublease shall conflict with the covenants of the Company under this Amended Lease or relieve the Company of its obligations hereunder for payment of rent or additional payment required hereunder or from any other of the conditions, obligations, agreements and covenants of this Amended Lease or with respect to any portion of the Leased Premises so transferred, assigned or subleased; and, provided further, however, that in each case the transferee, assignee or sublessee shall have sufficient financial responsibility and technical competence to conduct in an adequate manner the functions contemplated by the sublease; and provided further, however, that Company shall require any sublessee described in (ii) above to obtain and maintain insurance reasonably adequate to insure against risks arising from such sublessee's operations on the Leased Premises and that such insurance will name County as an additional insured. Any sublease shall provide for indemnification of County in a level equal to or greater than that contained in this Amended Lease. Consent shall not be unreasonably withheld or delayed by County.

The Parties acknowledge that there are currently approximately twelve hundred (1200) gross square feet located in the northwest section of the Leased Premises that is constructed as medical office space (hereafter "Medical Office Space"). Notwithstanding any other provision of this Amended Lease to the contrary, Company may sublease or otherwise make the Medical Office Space available to physicians or physician extenders without prior written consent of County so long as the physician and physician extenders are Medicaid providers and will treat Medicaid patients that seek services from providers using the Medical Office Space. This provision regarding the sublease of Medical Office Space applies to any future space within the Leased Premises that is constructed or otherwise configured for similar medical office space purposes.

- (j) Utility Services. The Company shall pay all charges for utility services furnished to the Leased Premises.
- (k) Access to Leased Premises by County and Designees. County, its agents, employees, and contractors may enter the Leased Premises at any time in response to an apparent emergency, and, in all other cases, at reasonable business hours to (a) inspect the Leased Premises, (b) exhibit the Leased Premises to prospective purchasers, lenders, or tenants, (c) determine whether Company is complying with its obligations in this Amended Lease, (d) supply any other service which this Lease requires County to provide, (e) post notices of non-responsibility or similar notices, or (f) make repairs which this Amended Lease requires County to make; however, all work will be done as promptly as reasonably possible and so as to cause as little interference to Company

as reasonably possible. Company waives any claim on account of any injury or inconvenience to Company's business, interference with Company's business, loss of occupancy or quiet enjoyment of the Leased Premises, or any other loss occasioned by Company to the extent County is or is attempting to perform work required or reasonably believed by County to be required under this Amended Lease. Every entry upon the Leased Premises by County or its authorized designate(s), excepting only entry during an apparent emergency, as hereinafter provided, shall be made in the presence of a representative of Company. Company and County shall always preserve the confidentiality of Company's protected health information as defined by HIPAA, files and other materials during the period of such entry. An "entry in the event of an apparent emergency" or similar reference in this paragraph, shall be an entry by County or its authorized designate(s) under such circumstances as may be necessary to prevent or correct an imminent danger to life or property.

- (l) Not a "Business Associate." Nothing contained herein shall be construed to make County responsible for or to provide County access to "protected health information" or to make County "business associates" of Company as those terms are defined and used in HIPAA.
  
- (m) Periodic Reports. Unless otherwise mutually agreed by Company and County, Company shall periodically provide a report to County on the operations of the Hospital including, without limitation, reports on utilization, quality of care, nature of the services being provided and financial performance. Such reports shall be provided through an appearance at a meeting of the Board of County Commissioners of County (or their designee) by an authorized representative of Company. Such reports shall include, without limitation, reports on the Hospital by independent third parties including the Centers for Medicare and Medicaid Services, the Joint Commission and AHCA. Such reports shall be provided at least annually. Nothing herein shall limit the ability of the County or its designees to conduct its own assessments or prepare its own reports evaluating the Leased Premises so long as such evaluations or the preparation of such reports does not disrupt the normal operation of the Company or the Hospital or infringe on patient privacy or confidentiality. The provision of all such evaluations or reports does not authorize either County or Company to provide any binding direction to the other beyond that otherwise stated in this Amended Lease.

## **ARTICLE VI. Condemnation**

Either Company or County shall have the right, in each party's independent judgment and at each party's independent expense, to contest any threatened taking of all or any portion of the Leased Premises by condemnation, eminent domain or other process. In the event of a taking of all or any portion of the Leased Premises by condemnation, eminent domain or other process, the Company shall waive any rights which it may have to any portion of the proceeds of the award for such taking, except to the extent hereinafter provided. Such proceeds shall be deposited in such lawful manner as the County shall direct and the same, at the direction of the County, shall be expended, to the extent possible, for the replacement of any portion of the Leased Premises so taken. County, upon being notified of any action or proceeding to take all or any portion of the Leased Premises, shall

immediately notify the Company of the pendency of such action or proceeding. If, after such taking of any portion of the Leased Premises, the remaining portion is determined by the Company to be insufficient for further operation as a hospital, this Amended Lease shall terminate without penalty to either party hereto as of the effective date of such taking.

If a partial taking of the Leased Premises by condemnation, eminent domain or other process shall occur and if the Amended Lease is not terminated as provided herein, the Company shall be allowed a proportionate reduction in the rental and additional consideration herein provided to be paid to County corresponding to the time during which and the extent to which the Company shall be deprived of the use and occupancy of the Leased Premises or any portion thereof.

A sale or transfer of all or any portion of the Leased Premises by County to any authority having the power of eminent domain, either under threat of condemnation or while condemnation proceedings are pending, shall be deemed a taking under the power of eminent domain for all purposes of this Article VI.

## **ARTICLE VII. Defaults and Remedies**

*Section 7.1 Events of Default by Company.* The following shall be "events of default" under this Amended Lease and the terms "event of default" or "default" shall mean, whenever they are used in this Amended Lease, any one or more of the following events:

- (a) The Company shall have admitted in writing it is insolvent or shall have filed a petition asserting that it is bankrupt or shall have made an assignment for the benefit of its creditors;
- (b) Possession of the Company's assets shall be taken by a receiver or trustee;
- (c) Except as otherwise herein permitted, including the permitted assignment or sub-lease of this Amended Lease or any portion of the Leased Premises by Company to an Affiliate of Company; the Company shall sublease the Leased Premises or any part thereof, or if the interest of the Company under this Lease shall be sold, assigned, or transferred under legal process or otherwise to any other person, firm or Company without the prior written consent of County as herein provided;
- (d) Should the County believe that Company has failed to perform or observe any other covenant required under this Amended Lease, then County shall provide Company written notice thereof. Within ten (10) business days thereof, County and Company shall begin to negotiate in good faith to resolve any dispute regarding any such assertion by County. Following such negotiation, should County provide written notice to Company regarding any failure of Company to perform or observe any covenant of this Amended Lease, then Company shall, within thirty (30) days of receipt, commence appropriate action in good faith to cure such failure and thereafter prosecute the same to completion with due diligence. Failure of Company to effectuate a cure to the reasonable satisfaction of County shall constitute an event of default; or

- (e) The Company shall have vacated the Leased Premises.

*Section 7.2 Remedies Upon Default by Company.* If any one or more events of default set forth in Article VII occurs, then County has the right, at its election:

- (a) Upon one hundred twenty (120) days' notice to Company, to terminate this Amended Lease, in which case Company's right to possession of the Leased Premises will cease and this Amended Lease will be terminated, except as to Company's liability, as if the expiration of the Amended Lease fixed in such notice were the end of the Amended Lease;
- (b) Upon one hundred twenty (120) days' notice to Company, to reenter and take possession of the Leased Premises or any part of the Leased Premises, repossess the same, expel Company and those claiming through or under Company, and remove the effects of both or either, using such force for such purposes as may be necessary, without being liable for prosecution, without being deemed guilty of any manner of trespass, and without prejudice to any remedies for arrears of any amounts payable under this Amended Lease or as a result of any preceding breach of covenants or conditions; or
- (c) Upon thirty (30) days' notice to Company, to cure any event of default and to charge Company for the cost of effecting such cure, including without limitation reasonable attorneys' fees and costs, provided that County will have no obligation to cure any such event of default of Company.
- (d) Should County elect to reenter as provided herein, or should County take possession pursuant to legal proceedings or pursuant to any notice provided by law, County may, from time to time, without terminating this Amended Lease, relet the Leased Premises or any part of the Leased Premises on such conditions and upon such other terms as County, in its reasonable discretion, may determine. No such reentry or taking possession of the Leased Premises by County will be construed as an election on County's part to terminate this Amended Lease unless a written notice of such intention is given to Company. No written notice from County under this section or under a forcible or unlawful entry and detainer statute or similar law will constitute an election by County to terminate this Amended Lease unless such notice expressly so states. County reserves the right following any such reentry or reletting to exercise its right to terminate this Amended Lease by giving Company such written notice, in which event this Amended Lease will terminate as specified in such notice.
- (e) Notwithstanding the foregoing, in the event Company vacates or abandons the Leased Premises, County may immediately exercise all rights and remedies available under this Amended Lease or in law or equity and County's obligations to Company shall immediately terminate.

*Section 7.3 Events of and Remedies Upon Default by County.* In the event County shall neglect or fail to perform or observe any warranties, covenants, representations, provisions, or

conditions made by or required to be performed by County under the terms of this Amended Lease and County shall, within thirty (30) days after written notice thereof by Company, fail to commence appropriate action in good faith to cure such failure and thereafter prosecute the same to completion with due diligence, County shall be responsible to Company for any and all costs incurred by Company as a result of the efforts of Company to cure the default of County. Company shall have the right, in addition to all other remedies provided in this Amended Lease or by law, to injunctive relief; provided, further, Company shall have the right to cure any such default at the expense of County, and County shall pay promptly to the Company the amount of such expenditure by Company to cure such default by County.

*Section 7.4 Provisions Applicable to All Parties.*

- (a) Remedies Cumulative. No remedy conferred upon or reserved to either party by this Amended Lease is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Amended Lease or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. Each party shall give the other party notice and a reasonable opportunity to cure prior to exercising any remedy reserved to such party in this Amended Lease.
- (b) Attorney's Fees and Litigation Expenses. In the event either party should employ attorneys or incur other expenses for the enforcement of performance or observance of any obligation or agreement contained in this Amended Lease, each party shall be responsible for its respective attorney's fees, litigation costs and expenses incurred by or on behalf of such party, except as otherwise provided herein.
- (c) Waiver and Breach. In the event any agreement contained in this Amended Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**ARTICLE VIII.  
Termination**

*Section 8.1 Termination by Company.* In addition to the other provisions in this Amended Lease,

- (a) Company may terminate the Lease upon not less than 360 days' notice to County, if Company determines that operating losses, including surtax revenues provided by County, during the Company's completed fiscal year preceding the notice are in excess of Five Hundred Thousand Dollars (\$500,000) and further that Company, in its sole discretion, determines that continued operation of the Hospital is not in its best interest. If Company determines that the operating losses are such that Company may choose to exercise this Section 8.1(a) option to terminate, then Company will

immediately notify County in order that County may consider, in its discretion, whether it will attempt to take steps to try to assist Company in a manner that may avoid termination. Failure to so notify the County shall in no way impact the Company's termination right as set forth in this section.

- (b) Company may, by notice to the County of its decision to do so, terminate this Amended Lease immediately if the Leased Premises are destroyed or materially damaged and not repaired, reconstructed or replaced or if title to or the use of the Leased Premises or any material part thereof is taken under exercise of the power of condemnation, eminent domain or other process and not replaced or restored to the satisfaction of the Company in its sole discretion.

*Section 8.2 Termination by County.*

- (a) Other than as set forth herein, this Amended Lease shall not be terminable by County prior to the expiration of the entire term (including any renewals) unless there is an uncured material breach by Company.
- (b) The County may terminate this Amended Lease upon the occurrence and continuation of an event of default under Section 7.1 and Section 7.2 above.

*Section 8.3 Reversion of Leased Premises to County.* Upon termination of this Amended Lease for any reason by either the County or the Company, the Leased Premises, including all replacement and additional furnishings and equipment installed or placed in or on the Leased Premises before termination, including, without limitation, the Leasehold Capital Improvements and Added Assets, shall revert to County, subject only to County's purchase of the Added Assets as set forth in this Amended Lease and further subject to Company's obligations to cooperate in the return of the Hospital and Leased Premises as set forth herein.

*Section 8.4 Management After Amended Lease Term Expiration.* At the end of the initial term of the Amended Lease, (if not renewed), or at the termination of any renewal hereunder, or if terminated earlier by mutual consent, by operation of law or otherwise, Company agrees that it will enter good faith negotiations to continue under a management arrangement, or similar arrangement for up to twelve months at County's option, in order to allow an orderly continuation of operations by County. The management agreement will be upon such terms as are customary within the industry at the time of the negotiation and execution of the management agreement. Company agrees to use its reasonable best efforts to negotiate a commercially reasonable management agreement as provided herein. However, if, after a 60-day period of negotiations, the Parties are unable to reach agreement on the terms of a management agreement acceptable to Company at its sole reasonable discretion, this provision shall have no further force or effect. Irrespective of whether or not the Parties enter such a management agreement, immediately upon expiration or termination of the Amended Lease the County shall bear all costs and responsibilities for staffing, operating, and maintaining the Hospital; and, to the fullest extent practicable, those Company Hospital employees necessary to the operation of the Hospital by County, other than executive management Company employees, shall, at County's option, become employees of County or its designee; and Company and County will cooperate to endeavor to ensure a smooth transition of employment for such employees. As set forth elsewhere in this Amended Lease, Company and County agree to cooperate

in the transfer of all necessary or appropriate licenses and permits from Company to County upon notice of Amended Lease termination or non-renewal, so that the transfers are effective on the Amended Lease termination date or as soon thereafter as practicable.

## **ARTICLE IX. Insurance and Indemnity**

*Section 9.1 Insurance.* The County and Company shall maintain, except as otherwise provided herein, the following insurance at its respective sole cost and expense:

- (a) Casualty. County shall, at its sole expense and at all times, keep the Leased Premises insured against loss or damage by fire, windstorm, flood, hurricane, tornado, or any other casualty by a policy or policies of full extended coverage insurance in a company or companies of good standing and qualified to write such insurance in the State of Florida or a suitable program of self-insurance. Such insurance or self-insurance programs shall be for an amount not less than the full insurable value of each of the Leased Premises, including completed improvements and additions thereto, or any separable portion thereof. Each such policy shall provide that the loss, if any, with respect to the Leased Premises shall be payable to the County, or the Company as its interests may appear. If, at any time during the Amended Lease Term, the Leased Premises are destroyed or damaged, County shall use its reasonable best efforts, exercised promptly and diligently, to repair such damage and reconstruct and restore the Leased Premises as soon as reasonably possible and as near to its former condition as practicable at County's expense, using the proceeds of such insurance or self-insurance program exclusively for such purposes. If it is reasonably practicable to do so, Company may continue the operation of the Hospital on the Leased Premises during the period the damage, destruction, repair, reconstruction, or restoration continues; provided, however, if, during such period, it is not reasonably practicable to operate the Hospital on the Leased Premises, the Company may cease operations of the Hospital, until the repairs are made and the reconstruction and restoration completed. However, the provisions of this paragraph shall not supersede Company's right to immediately terminate the Amended Lease under Section 8.1(b).
- (b) Public Liability. Company shall maintain comprehensive general public liability insurance including blanket contractual liability and personal injury liability protecting Company against liability for injuries to persons and property with limits and in amounts as maintained by Company for comparable hospital facilities operated by it or its Affiliates. Such annual aggregate and umbrella may be applicable to other Affiliates of the Company.
- (c) Automobile. Company shall maintain automobile insurance including owned, non-owned and hired automobiles protecting the Company against liability as required by state law.
- (d) Business Interruption. Company shall maintain use and occupancy (or business interruption) insurance, covering interruption of the Company's operations in whole or in part by reason of the total or partial suspension of, or interruption in, the



operation of the Hospital, including its rental of buildings, caused by the damage to or destruction of any part of the Hospital, with such exceptions as are customarily imposed by insurers, in an amount to be determined solely by Company. Regardless of the amount of such insurance, County shall not be liable to Company for damages caused by business interruption by reason of the total or partial suspension of, or interruption in, the operation of the Hospital caused by the damage to or destruction of any part of the Hospital

- (e) Professional Liability. Company shall, at its expense and at all times, procure and maintain a policy or policies of professional liability insurance in a company or companies of good standing qualified to write such insurance in the State of Florida or a suitable program of self-insurance in an amount not less than that maintained for comparable hospital facilities operated by it or its Affiliates.
- (f) Worker's Compensation. Company shall further, at its expense and at all times, maintain insurance or one or more suitable self-insurance programs to cover worker's compensation and in such amounts as are required by the laws of the State of Florida.

With respect to all of the above-described types of insurance to be maintained by Company, Company shall have the right to modify or adjust coverages, limits, and deductibles, and from time to time, consistent with then existing policies of Company and its Affiliates. Each policy with respect to the Leased Premises provided for in subsection (a) of this Section 9.1 shall name or carry an endorsement including Company as an additional insured and shall be cancelable only upon at least ten (10) days' written notice to Company but only if replaced by County with comparable insurance. Each policy with respect to the Leased Premises provided for in subsection (b) of this Section 9.1 shall name or carry an endorsement including County as an additional insured and shall be cancelable only upon at least ten (10) days' written notice to County but only if replaced by Company with comparable insurance. A duplicate original of each such policy or a certificate or certificates in evidence thereof shall be delivered to and held by County.

*Section 9.2 Indemnity.* Company and County shall each indemnify and hold the other harmless from and against any damages resulting from a breach of their respective obligations under this Amended Lease. County shall remain responsible for, and indemnify Company against, any and all liabilities, indebtedness, commitments or obligations of any kind whatsoever, which relate to the assets of the Leased Premises prior to the Commencement Date of this Amended Lease. County's indemnification obligation is not intended to extend any further than allowed by Section 768.28, Florida Statutes or any other applicable provision of Florida law.

## **ARTICLE X.**

### **Subordination; Non-Disturbance; Attornment**

*Section 10.1 Subordination, Non-Disturbance and Attornment.* At the request from time to time by one or more institutional holders of a mortgage or deed of trust that may hereafter be placed by the County upon the Leased Premises or other parts of the building in which the Leased Premises are located, and any and all amendments, renewals, replacements, modifications, consolidations, spreaders, refinancing and extensions thereof (collectively, a "Mortgage"), Company shall

subordinate this Amended Lease and all of Company's rights and estate hereunder to each such Mortgage as though each such Mortgage has or had been executed, acknowledged, delivered and recorded prior to the Amended Lease and any amendments, modifications, extensions, renewals or restatements thereof. Company shall further agree with each such holder of a Mortgage ("Mortgagee") that Company will attorn to and recognize such Mortgagee or the subsequent purchaser of the Mortgage from Mortgagee at any foreclosure sale or any sale under a power of sale contained in any such Mortgage, as County under this Amended Lease for the balance of the Term then remaining, subject to all of the terms and provisions of this Amended Lease; provided, however, that each such Mortgagee simultaneously executes and delivers a written agreement in recordable form (a) consenting to this Amended Lease and agreeing that, notwithstanding any such other lease, mortgage, deed of trust, right, title or interest, or any default, expiration, termination, foreclosure, sale, entry or other act or omission under, pursuant to or affecting any of the foregoing, Company shall not, so long as no Event of Default by Company has occurred hereunder, be disturbed in peaceful enjoyment of the Leased Premises nor shall this Amended Lease be terminated or canceled at any time, except in the event County shall have the right to terminate this Amended Lease under the terms and provisions expressly set forth herein; and (b) agreeing that for any period while it is landlord hereunder, it will perform, fulfill and observe all of County's representations, warranties and agreements set forth herein.

*Section 10.2 Estoppel Certificates.* At any time and from time to time, County and Company each agree, upon request in writing from the other, to execute, acknowledge and deliver to the other or to any person designated by the other a statement in writing certifying that the Amended Lease is unmodified and is in full force and effect, or if there have been modifications, that the same is in full force and effect as modified (stating the modifications), that the other party is not in default in the performance of its covenants hereunder, or if there have been such defaults, specifying the same, and the dates to which the rent and other charges have been paid.

**ARTICLE XI.  
Notices**

Any notice or notification specified hereunder to be given to the Company or the County or GHI shall be deemed effective upon the earlier of actual delivery or three (3) days following the date such notice shall have been mailed by United States certified or registered mail, postage prepaid, addressed to the Company, or County, or GHI, respectively, as follows:

County: County Administrator  
Gadsden County, Florida  
9-B East Jefferson Street  
Quincy, Florida 32353-1799

with copy to: County Attorney  
c/o Gadsden County Administrator  
9-B East Jefferson Street  
Quincy, Florida 32353-1799

Company: Chief Executive Officer

Tallahassee Medical Center, Inc.  
d/b/a Capital Regional Medical Center  
2626 Capital Medical Boulevard  
Tallahassee, Florida 32308

with copy to:           Operations Counsel  
                                  Legal Department  
                                  P.O. Box 550  
                                  Nashville, TN 37202

The County or the Company may, however, from time to time by notice in writing to the other party establish an addressee or an address differing from the foregoing for the purpose of giving notice or notification under this Amended Lease.

**ARTICLE XII.**  
Miscellaneous Provisions

*Section 12.1 Right of First Refusal to Lease or Purchase.* If County receives and desires to accept or desires to make any bona fide offer (an "Offer") for the sale of the Leased Premises (and any other assets associated with Hospital) in whole or in part or for the sale or transfer of the Leased Premises, County shall notify Company in writing of each Offer. This notice (the "Notice of Offer") shall contain a copy of the Offer and all other terms and conditions applicable to the Offer. In the event that the Offer is for other property in addition to the Leased Premises or some part thereof, the Notice of Offer shall pro rate the Offer, stating that portion of the Offer which is related to the Leased Premises. The whole or that part of the Leased Premises to which any Offer for the sale or other conveyance of the Leased Premises applies is referred to as the "Offer Premises." Company shall have the right to purchase ("Right of First Refusal") the Offer Premises at the price and terms set forth in the Notice of Offer. Company shall exercise its Right of First Refusal, if at all, by giving written notice of exercise to County no later than the date thirty (30) days after Company's receipt of the Notice of Offer. If Company does not exercise the Right of First Refusal with regard to an Offer of which it has been given a Notice of Offer, and if within one hundred eighty (180) days after the date of the Notice of Offer, the Offer Premises is conveyed in accordance with the Offer, Company's Right of First Refusal shall terminate with respect to the Offer Premises so sold or conveyed, provided that: (i) the Right of First Refusal shall remain in effect with respect to the balance of the Leased Premises, if any, not conveyed pursuant to the Offer, (ii) once an Offer of which County has given Company Notice of Offer is accepted by County, County shall not agree to a reduction of the purchase price, more favorable terms or any change in the nature or amount of the consideration to be given in exchange for the Offer Premises without first giving Company notice of the reduction, more favorable terms or change, and upon receipt of that notice, Company shall again have the Right of First Refusal to acquire the Offer Premises at the new price and new terms; and (iii) if any Offer is not accepted by Company or if the Offer Premises are not conveyed in accordance with the accepted Offer within one hundred eighty (180) days after the date Company received the Notice of Offer, then Company's Right of First Refusal shall be applicable to the Offer Premises and to any subsequent Offer received by County with respect to the Leased Premises during the term of this Amended Lease. Upon request of County, Company shall furnish to County or the purchaser of the Offer Premises an affidavit in recordable form stating the extent to which Company' Right of First Refusal has terminated in accordance with this Section and setting forth such other matters as

Company shall deem necessary or appropriate. A sale by County of the Leased Premises to a third party will not terminate, modify, or affect in any manner this Amended Lease. In the event that Company exercises the Right of First Refusal with respect to the Leased Premises, County shall deliver exclusive possession of the Offer Premises to Company at the closing. The closing for the payment of the purchase price and for delivery of County's deed for the Leased Premises shall be held in Gadsden County, Florida, at a time mutually agreed to by the Parties within thirty (30) days after the date that Company exercises its Right of First Refusal.

In addition, County shall consult with Company regarding the lease of any portion of the Hospital building not subject to the Amended Lease and will provide Company a right of first refusal to lease said space upon the same terms and conditions as contained in the offer from the third party, in accord with the process described in the above preceding paragraph. Should Company opt not to exercise this right of first refusal, and if the potential lessee would provide health care related services, then County shall seek the consent of Company to any lease or sale of space in the portion of the Hospital building not subject to the Amended Lease and Company shall respond within thirty (30) days of County's request. Company's consent will not be unreasonably withheld. It is the intention of the Parties that the use of portions of the Hospital building that are not part of the Leased Premises in a manner that increases access to health care services for the residents of Gadsden County is encouraged so long as such uses are not directly adverse to the interests of Company.

*Section 12.2 Severability.* In the event any provision of this Amended Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof or such otherwise invalid provision under circumstances other than those under which it was determined to be invalid, except to the extent that such other provision is wholly dependent for its operation upon the part declared to be invalid, and to that end the provisions hereof are agreed and declared to be severable.

*Section 12.3 Amendments and Modifications.* This Amended Lease shall not be amended or modified except by a written instrument signed by the duly authorized representatives of each of the Parties hereto.

*Section 12.4 Captions.* The titles of articles, sections, subsections, or paragraphs herein are solely for the convenience of the Parties and shall not be used to explain, limit, expand, modify, simplify, or aid in the interpretation of the provisions of this Amended Lease.

*Section 12.5 Assignments.* Except as herein otherwise expressly provided, no party hereto may assign or otherwise transfer its rights or obligations hereunder without the prior written consent of the other Party hereto, which consent will not be unreasonably withheld. For purposes of this section, the sale, transfer, pledge or assignment of a membership interest or of a controlling equity ownership interest, such that the existing owner of either Party fails to maintain a majority of its voting interests, shall be deemed an attempted assignment.

*Section 12.6 Entire Agreement.* This Amended Lease constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and the transactions hereby contemplated. Any prior understandings, proposals, or representations of any kind shall not be binding upon either party except to the extent incorporated in this Amended Lease. As noted in section 3.1 above, except as otherwise specifically stated herein, the provisions of this Amended

Lease supersede and replace the Initial Lease and the First, Second, Third, Fourth, Fifth, Sixth and Seventh Amendments to the Initial Lease. However, it is the intention of the Parties that as of the Commencement Date of this Amended Lease, the lease of the Leased Premises by County to Company shall continue uninterrupted. This Amended Lease is intended to merely modify, extend and renew the Initial Lease on the terms as stated herein as referred to in section 155.40(23), Florida Statutes (2019).

*Section 12.7 Governing Law.* This Amended Lease shall be governed by and construed in accordance with the Constitution, laws and regulations of the State of Florida without regard to provisions with respect to conflicts or choices of law.

*Section 12.8 Relationship of the Parties.* Nothing contained herein shall be deemed or construed by the Parties hereto, nor by any third party, to create any relationship (including the relationships of principal and agent or of partnership or of joint venture) other than the relationship of landlord and tenant between the Parties hereto.

*Section 12.9 No Third Party Beneficiaries.* This Amended Lease and the terms, covenants, agreements and other provisions set forth in this Amended Lease (collectively, the "Amended Lease Provisions") are for the sole and exclusive benefit of County and Company. No person, firm, company, partnership or other legal entity whatsoever (individually and collectively, a "Third Party") shall be a third party beneficiary with respect to this Amended Lease or any of the Amended Lease Provisions, and none of the Amended Lease Provisions shall inure to the benefit of any Third Party or create any rights against County or Company for the benefit of or enforceable by any Third Party.

*Section 12.10 Execution in Counterparts.* This Amended Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

*Section 12.11 Time of Essence.* The Parties hereto agree that time is of the essence with respect to performance of the obligations hereunder.

*Section 12.12 No Finders or Brokers.* Neither County nor the Company nor any of its Affiliates has engaged any finder or broker in connection with the transactions contemplated hereunder.

*Section 12.13 Memorandum of Amended Lease.* The Parties hereto agree to enter into a Memorandum of Amended Lease in a form reasonably acceptable to both Parties and appropriate for recordation.

*Section 12.14 Review of Lease.* Company and County acknowledge that each of them and their counsel have had an opportunity to review this Amended Lease.

*Section 12.15 No Merger.* The voluntary or other surrender of this Amended Lease by Company or the cancellation of this Amended Lease by mutual agreement of the Parties or the termination of this Amended Lease on account of Company's default will not work a merger, and will, at County's option, (a) terminate all or any subleases and subtenancies or (b) operate as an assignment to County of all or any subleases or subtenancies. County's option under this Section

will be exercised by written notice to Company and all known sublessees or subtenancies in the Leased Premises or any part of the Leased Premises.

*Section 12.16 Attorneys' Fees.* Between the parties hereto and in connection with any interpretation, defense or enforcement of any matter arising out of or in any manner relating to this Amended Lease, the prevailing party shall be entitled to recover reasonable attorneys' fees and disbursements (including disbursements which would not otherwise be taxable as costs in the proceeding). In connection with any suit, action, or other proceeding, including arbitration or bankruptcy, arising out of or in any manner relating to this Amended Lease, the prevailing party shall be entitled to recover reasonable attorneys' fees and disbursements (including disbursements which would not otherwise be taxable as costs in the proceeding). All references in this Amended Lease to attorneys' fees shall be deemed to include all legal assistants' and paralegals' fees and shall include all fees incurred through all post-judgment and appellate levels and in connection with bankruptcy proceedings.

*Section 12.17 Effectiveness.* Notwithstanding any other provision hereof to the contrary, this Amended Lease shall not be legally effective and binding on the parties hereto until such time as all shall have been fully executed by all parties.

*Section 12.18 Confidentiality of Proprietary Information.* Except as provided in subsection 12.18(b), all properly designated information disclosed to County by Company and its affiliates shall be deemed to be "Proprietary Information".

(a) Company understands that County is legally required to abide by various public records and government in the sunshine laws, including, without limitation, F.S. §§ 119.07 and 286.011, as amended. County agrees that it shall abide by the confidentiality and other requirements of this Amended Lease, except as required by law or court order. It is noted that any portion of the Proprietary Information constituting trade secret information as defined by applicable Florida statute is exempt from the public record laws to the extent such information is properly designated and otherwise meets applicable requirements for such information. In the event that County receives a request, pursuant to such public records or government in the sunshine laws, for the production of any Proprietary Information, County shall immediately notify Company of such request and will timely assert all exceptions to the production of such Proprietary Information or other information requested by Company that are reasonably available to County, and will use its best efforts to obtain, if reasonably necessary, a legally enforceable ruling supporting the non-production of such materials or information. Company may, at its own option and expense, prepare comments, submit information and/or intervene in any legal proceeding stating why the requested information is exempt from disclosure. County's obligation to enforce this provision in any legal proceeding regarding such information shall immediately terminate should Company choose not to intervene and affirmatively assert the trade secret or other confidential nature of such information; provided that in such event County shall furnish only that portion of the Proprietary Information that it is advised by a written opinion of its counsel is legally required.

(b) County shall use all reasonable efforts to protect the Proprietary Information received with the same degree of care used to protect its own Proprietary Information from unauthorized use or disclosure by its employees and Representatives, except that such Proprietary Information may be

used or disclosed to its employees and Representatives as may be reasonably required to evaluate a possible transaction.

(c) It is understood that the term "Proprietary Information" does not include Information which:

- (1) is now or hereafter in the public domain through no fault of County;
- (2) prior to disclosure hereunder, is properly within the rightful possession of County;
- (3) is lawfully received from a third party with no restriction on further disclosure;
- (4) is obligated to be produced under applicable law or order of a court of competent jurisdiction, unless made the subject of a confidentiality agreement or protective order; or
- (5) has not been properly designated as "Proprietary Information" or as confidential as required by Florida law.

IN WITNESS WHEREOF, the parties hereto have caused this Amended Lease to be executed by its respective duly authorized officers as of the day and date first above written.

COUNTY:

Gadsden County Florida Board of Commissioners

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

COMPANY:

Tallahassee Medical Center, Inc. d/b/a Capital Regional Medical Center

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

Acknowledgement and Consent by Gadsden Hospital, Inc.

As referenced in the Recitals above, Gadsden Hospital, Inc. is a party to the Initial Lease. This Amended Lease is also hereby approved and executed by Gadsden Hospital, Inc. for the limited purpose of acknowledging and consenting to the removal of Gadsden Hospital, Inc. from the Amended Lease.

Gadsden Hospital, Inc.

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_



**EXHIBIT A – SCHEMATIC DRAWING OF LEASED HOSPITAL**

## **INDIGENT CARE PAYMENT AGREEMENT**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the County of Gadsden, Board of County Commissioners (“County”) and Tallahassee Medical Center, Inc., d/b/a Capital Regional Medical Center, (“Hospital”), effective \_\_\_\_\_, 2020 (the “Effective Date”).

### **RECITALS**

WHEREAS, pursuant to Section 212.055(7), Florida Statutes, counties have authority to levy an indigent care surtax pursuant to an ordinance conditioned to take effect upon approval by a majority vote of the electors of the county;

WHEREAS, in accordance with Section 212.055(7), Florida Statutes, the voters of Gadsden County approved Gadsden County Ordinance No. 08-025, which imposed a half-cent indigent care surtax;

WHEREAS, pursuant to Gadsden County Ordinance No. 08-025, the proceeds of said indigent care surtax shall be expended to provide health care services to eligible participants under the Plan and to fund work for the reopening of Gadsden Community Hospital;

WHEREAS, County, GHI and Hospital entered into a certain lease agreement in March 2010 wherein County and GHI leased the Gadsden Community Hospital facility to Tallahassee Medical Center, Inc., d/b/a Capital Regional Medical Center, now known as “Capital Regional Medical Center - Gadsden Memorial Campus” (“CRMC-Gadsden Memorial Campus”);

WHEREAS, Hospital has leased and operated Capital Regional Medical Center – Gadsden Memorial Campus since March 2010, and has provided indigent health care services at that hospital continuously since operating the hospital;

WHEREFORE, in consideration of the foregoing recitals, the parties agree as follows:

1. The parties acknowledge that the proceeds from the Gadsden County one-half (1/2) cent indigent care surtax must be used to repay the debt associated with the cost of renovations of the Hospital and to provide funding for indigent care. The parties acknowledge that there are other appropriate purposes for which proceeds from the surtax may be used, including but not limited to providing payments to Hospital for the provision of indigent health care services at CRMC-Gadsden Memorial Campus.

2. The Board of County Commissioners of Gadsden County agrees to annually allocate Two Hundred Thousand Dollars (\$200,000) or twenty percent (20%) of the proceeds from the indigent care surtax not otherwise committed to debt repayment, whichever is less, to and for the benefit of the Hospital for indigent care that will be provided by the Hospital as well as other expenses necessary for the successful operation of the Hospital.

3. All such allocations to the Hospital must be consistent with Gadsden County Ordinance 08-025 and any other applicable requirements of Florida law, and distributions of the tax proceeds shall be made quarterly by County to Hospital.

4. Pursuant to Section 155.40(18)(b), Florida Statutes (2019), to the extent the revenue from the surtax exceeds \$100,000 annually, Hospital shall be accountable to County in that this agreement shall be subject to modification upon twelve months' notice to Hospital. Should Section 155.40(18)(b), Florida Statutes (2019) be amended during the term of this Agreement, this Agreement shall be subject to modification in order that it be kept consistent with the requirements of Florida law.

5. This Agreement shall remain in effect as long as Hospital leases CRMC-Gadsden Memorial Campus from County, except as provided in paragraph 4. Above, or unless modified in writing as mutually agreed by the parties.

6. Nothing in this Agreement shall be construed to require County or County's Representatives to admit patients to Hospital or the facility of any other Affiliate or to utilize Hospital or any other Affiliate to provide inpatient, outpatient or other services to patients or otherwise generate business for Hospital or any other Affiliate. Notwithstanding the unanticipated effect of any of the provisions herein, the parties intend to comply with 42 U.S.C. § 1320a-7b(b) (commonly known as the Anti-Kickback Statute), 42 U.S.C. § 1395nn (commonly known as the Stark law), and any other federal or state law provision governing fraud and abuse or self-referrals under the Medicare or Medicaid programs, as such provisions may be amended from time to time. The parties further intend that this Agreement comply with: (i) as many of the conditions for meeting the personal services and management contract safe harbor to the Anti-Kickback Statute which is set forth in 42 C.F.R. 1001.952(d) as reasonably practicable; and (ii) all of the requirements for meeting the personal services arrangement exception to the Stark law, 42 U.S.C. § 1395nn(e)(3) as interpreted in Final Regulation § 411.357(d), 69 C.F.R. 16053, 16138-39, as such regulations may be amended. This Agreement shall be construed in a manner consistent with compliance with such statutes and regulations, and the parties hereto agree to take such actions necessary to construe and administer this Agreement therewith. The parties solely intend the sales tax funds paid by County are to compensate Hospital for the provision of indigent health services, and not influence County or County's Representatives with regard to any referrals of patients to Hospital or any other Affiliate. As such, the parties acknowledge that the funds paid to Hospital hereunder would be the same whether or not any such referrals are made. The parties further intend that the compensation paid hereunder shall be fair market value for the services rendered based on arm's length bargaining and the value of similar services in the community. In the event any court or administrative agency of competent jurisdiction determines this Agreement violates any of such statutes or that the compensation hereunder exceeds reasonable compensation, then the parties hereto agree to take such actions as necessary to amend this Agreement to comply with the applicable statutes or regulations, as provided herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized representatives on the date first written above.

COUNTY:

County of Gadsden, Board of County Commissioners

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

GHI:

HOSPITAL:

Tallahassee Medical Center, Inc. d/b/a Capital Regional Medical Center

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

**HEALTH CARE TRANSPORTATION SERVICE AGREEMENT**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between **County of Gadsden, Board of County Commissioners, d/b/a Gadsden Emergency Medical Services** (“Transporter”) and **Tallahassee Medical Center, Inc. d/b/a Capital Regional Medical Center**, (“Hospital”), effective \_\_\_\_\_, 2020, (the “Effective Date”).

**RECITALS:**

- A. Hospital desires to obtain professional health care transportation services for the transfer of equipment, supplies and patients from Hospital’s Gadsden County location at 23186 Blue Star Highway, Quincy Florida (“Gadsden Facility”).
- B. Transporter desires to provide such services and has the necessary equipment, training, expertise, professional certifications and licenses.

**NOW, THEREFORE**, in consideration of the foregoing recitals, mutual covenants and promises, and provisions set forth herein and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**ARTICLE I  
RESPONSIBILITIES OF TRANSPORTER**

- 1.1 Provision of Services. Transporter agrees to provide Hospital with ambulance transport services related to patients originating in Gadsden County, Florida, pursuant to the terms and conditions set forth in this Agreement. Transporter shall provide sufficient ambulances to service the needs of the Hospital on a 24 hour a day basis.
- 1.2 Timeliness of Services. Transporter shall provide all health care transportation services on a timely basis, determined as follows:
  - a. Arrival time for pick-ups with a transport distance of less than 75 miles scheduled four (4) or more hours in advance shall be on time for at least 90% of the scheduled transports on a rolling three (3) month average.
  - b. Arrival time for pick-ups with a transport distance of less than 75 miles scheduled less than four (4) hours in advance, when such notice is given during regular business hours (6:00 am to 6:00 pm, Monday through Friday), shall be within sixty (60) minutes of the service request. When less than four (4) hours notice is given outside of regular business hours, a Transporter vehicle will be provided at the pick-up location within ninety (90) minutes of the request for service. All transports shall be on time least 80% on a rolling three (3) month average.
  - c. For transports of 75 miles or greater, Transporter shall make reasonable efforts to accommodate such transports within a reasonable time and subject to the availability of an ambulance for such transport. Transporter reserves the right to refuse a transport of 75 miles or greater if, in the judgment of Transporter, to provide the transport would deplete the resources of the Transporter to a level that would endanger the ability of the Transporter to provide adequate ambulance coverage in Gadsden County. In the event Transporter is unable to make such transport, Transporter will assist the Hospital in arranging alternate transport.

- 1.3 Disaster Services. In the event of a major disaster requiring the evacuation of Hospital's facilities, Transporter shall, subject to equipment and manpower availability, utilize its resources to provide Hospital support and patient transportation.
- 1.4 Confidentiality. Transporter shall maintain confidentiality of client information acquired in the course of providing services, and shall not release such information without prior written authorization from a representative of Hospital or otherwise in accordance with any applicable law, rule or regulation.
- 1.5 Certifications and Licenses. Transporter shall maintain all certifications and licenses as required by state and local agencies governing vehicle operations.
- 1.6 Hospital Notification. Transporter shall keep Hospital informed of its policies, procedures and activities relevant to Transporter's obligations under this Agreement, and shall meet with representatives of Hospital on a regular basis to review procedures, policies and quality of services.
- 1.7 Insurance. Transporter shall maintain, at its own expense, professional liability insurance in amounts equal to at least \$1,000,000 for each claim and \$3,000,000 annual in the aggregate. Transporter shall maintain, at its own expense, comprehensive general liability insurance in amounts equal to at least \$1,000,000 for each claim and \$3,000,000 annual in the aggregate. Transporter agrees to furnish Hospital with satisfactory evidence of such insurance upon request. Transporter shall immediately advise Hospital of any termination of such insurance or any reduction in the amount of such insurance.
- 1.8 Billing. For all patients for which Hospital is responsible for payment, Transporter shall invoice Hospital on a monthly basis (based upon the rate schedule in Attachment A), each invoice reflecting the total amount due for the previous month's service. Invoices will also delineate the type of service provided; points of pick-up and discharge; date and time service was requested, pick-up time; distance of transport; added charges, if any; and Hospital's authorization or reference number for each transport, if available.
- 1.9 Availability of Records. Transporter shall make any and all records related to this Agreement available for inspection and/or audit upon request by Hospital.
- 1.10 Equipment. Should Hospital provide equipment necessary for the convenient transfer of patients, Transporter shall assume custody for such equipment during the transfer, and return such to Hospital as soon as practicable after the transfer.
- 1.11 Patient Valuables. Transporter shall document the receipt of patient valuables, assure custody for such upon receipt, and deliver such to a responsible party at the receiving facility.
- 1.12 Documentation Records. Transporter shall retain for a period of four (4) years after furnishing services as described in this Agreement, and provide upon request to the Secretary of Health and Human Services or the Comptroller General or any of their duly authorized representatives, the Agreement, books, documents, and records necessary to certify the nature, extent, and cost of provided services.
  - a. Any provision of this Agreement performed under a sub-contractual agreement valued at \$10,000.00 or more over a 12-month period shall also be retained for a period of four (4) years following receipt of services, and Transporter shall afford the Secretary of Health and Human Services or the Comptroller General access to the sub-contractual agreement, as well as to the subcontractor's books, documents and records necessary to verify the nature, extent and costs of the subcontract.
  - b. The above provision is included pursuant to Section 1861 (v) (1) (I) of the Social Security Act; inapplicability hereto shall nullify its force and effect for purposes of this Agreement.

- 1.13 Patient's Right To Ambulance Service. Transporter does not discriminate in the provision of covered medical services hereunder, whether on the basis of a person's age, sex, marital status, sexual orientation, race, color, religion, ancestry, national origin, disability, handicap, health status, or other unlawful basis including, without limitation, the filing by a person of any complaint, grievance or legal action against Hospital, Transporter or a payor.
- 1.14 Provision of Care. Transporter shall provide the Hospital Emergency Room with the assistance of its Paramedics and Emergency Medical Technicians to assist Hospital staff in the transition of patients from the ambulance to the Hospital for the provision of emergency care for patients transported to Hospital by Transporter as available.

## **ARTICLE II HOSPITAL RESPONSIBILITIES**

- 2.1 Agreement to Meet. Hospital agrees to meet with representatives of Transporter on a regular basis, at mutually acceptable times, to review policies, procedures, and quality issues. Hospital and Transporter shall annually review the attached rate schedule for adjustments within sixty (60) days of the Agreement anniversary date.
- 2.2 Timeliness of Payment. When acting in the capacity of guarantor of payment, Hospital shall reimburse Transporter within forty-five (45) days from date of receipt of invoice, according to the contract rate payment schedule in Attachment A to this Agreement.
- 2.3 Equipment Records. For any equipment that Hospital provides Transporter to be used for the transport of patients, Hospital shall provide Transporter with any necessary records to document the provision of such equipment.

## **ARTICLE III TERM AND TERMINATION**

- 3.1 Term. The term of this Agreement shall commence on the date set forth on the first page of this Agreement and shall continue for a period of five (5) years. This Agreement may be extended for successive one (1) year terms upon the mutual agreement of both Hospital and Transporter.
- 3.2 Termination. This Agreement may be terminated at any time, in writing, by either party giving the other party one hundred eighty (180) days advance written notice.

## **ARTICLE IV OTHER PROVISIONS**

- 4.1 Compliance with Applicable Laws, Rules, and Regulations. All services furnished by Transporter shall be rendered in full compliance with all applicable Federal, State and local laws, rules, and regulations. It shall be Transporter's sole responsibility to determine which laws, rules, and regulations apply to the services rendered under this Agreement, and to maintain compliance at all times.
- 4.2 Third Party Billing Information. Hospital and Transporter will use their best efforts to assist each other in obtaining patient and/or third-party billing information. Each party shall cooperate with the other party in providing this information.

- 4.3 Indemnification by Transporter. Transporter hereby agrees to indemnify and hold harmless, Hospital, its officers, directors and employees for, from and against all damages, losses, liabilities (absolute and contingent), fines, penalties, costs and expenses (including, without limitation, reasonable attorneys fees, costs or expenses incurred in the investigation, defense or settlement of any claim covered by this indemnity) with respect to or arising out of any demand, claim, investigation or action of any kind or nature resulting from personal injury to any person (including death), or the damage to any property, arising or alleged to have arisen out of any of Transporter's negligent acts or omissions related to the performance of this Agreement. Notwithstanding the foregoing, the County's indemnification obligation is not intended to extend any further than allowed by section 768.28, Florida Statutes, or any other applicable provision of Florida law.
- 4.4 Indemnification by Hospital. Hospital hereby agrees to indemnify and hold harmless, Transporter, its parent and affiliated companies, and its and their officers, directors, shareholders and employees for, from and against all damages, losses, liabilities (absolute and contingent), fines, penalties, costs and expenses (including, without limitation, reasonable attorneys fees, costs or expenses incurred in the investigation, defense or settlement of any claim covered by this indemnity) with respect to or arising out of any demand, claim, investigation or action of any kind or nature resulting from the personal injury to any person (including death), or the damage to any property, arising or alleged to have arisen out of any negligent act or omission of Hospital, its officers, directors, employees or agents, related to the performance of this Agreement.
- 4.5 Regulatory Requirements. Nothing in this Agreement shall be construed to require Transporter or Transporter's Representatives to admit patients to Hospital or the facility of any other Affiliate or to utilize Hospital or any other Affiliate to provide inpatient, outpatient or other services to patients or otherwise generate business for Hospital or any other Affiliate. Notwithstanding the unanticipated effect of any of the provisions herein, the parties intend to comply with 42 U.S.C. § 1320a-7b(b) (commonly known as the Anti-Kickback Statute), 42 U.S.C. § 1395nn (commonly known as the Stark law), and any other federal or state law provision governing fraud and abuse or self-referrals under the Medicare or Medicaid programs, as such provisions may be amended from time to time. The parties further intend that this Agreement comply with: (i) as many as reasonably practicable of the conditions for meeting the personal services and management contract safe harbor to the Anti-Kickback Statute which is set forth in 42 C.F.R. 1001.952(d); and (ii) all of the requirements for meeting the personal services arrangement exception to the Stark law, 42 U.S.C. § 1395nn(e)(3) as interpreted in Final Regulation § 411.357(d), 69 C.F.R. 16053, 16138-39, as such regulations may be amended. This Agreement shall be construed in a manner consistent with compliance with such statutes and regulations, and the parties hereto agree to take such actions necessary to construe and administer this Agreement therewith. The parties solely intend the fees paid to Transporter to compensate Transporter for the provision of such services, and not influence Transporter or Transporter's Representatives with regard to any referrals of patients to Hospital or any other Affiliate. As such, the parties acknowledge that the compensation paid to Transporter hereunder would be the same whether or not any such referrals are made. The parties further intend that the compensation paid hereunder shall be fair market value for the services rendered based on arm's length bargaining and the value of similar services in the community. In the event any court or administrative agency of competent jurisdiction determines this Agreement violates any of such statutes or that the compensation hereunder exceeds reasonable compensation, then the parties hereto agree to take such actions as necessary to amend this Agreement to comply with the applicable statutes or regulations, as provided herein.



**ARTICLE V  
MISCELLANEOUS PROVISIONS**

- 5.1 Independent Contractor. It is understood and agreed that the personnel of Transporter and Hospital shall not be considered agents or employees of the other and shall not be under the supervision, management, direction or control of the other in the performance of their duties, except as may be required by Florida Department of Health rules and regulations, if applicable. The employees of each party are not entitled to any of the benefits that the other party provides for its employees.
- 5.2 Governing Law. This Agreement shall be subject to and governed according to the laws of the state in which Hospital is located.
- 5.3 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors, assigns or other legal representatives.
- 5.4 Assignment. No right or obligation hereunder may in any way whatsoever be assigned or delegated to a third party without the express prior written consent of the other party hereto, and any attempted assignment without such consent shall be considered null and void. Notwithstanding the above, this Agreement, or any or all of the services required herein, may be assigned, or subcontracted to any of Transporter's affiliates.
- 5.6 Severability. If any portion or portions of this Agreement shall be for any reason invalid or unenforceable, the remaining portion(s) shall be valid and enforceable and carried into effect unless to do so would clearly violate the present legal and valid intention of the parties hereto.
- 5.7 Notices. Any notice required or permitted to be given pursuant to any provisions of this Agreement shall be given in writing, and either delivered in person, by electronic transmission, deposited in the United States mail, postage pre-paid, registered or certified mail, return receipt requested, properly addressed, or by a nationally recognized overnight courier service, to the following addresses:

**Transporter**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

**Hospital**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

The notification addresses listed above can be changed by either party with proper notice as listed above.

- 5.8 Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes any previous agreement or understanding, whether oral or otherwise. No modification of this Agreement shall be valid unless in writing and signed by each of the parties hereto.
- 5.9 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.
- 5.10 Reports. Transporter agrees to provide Hospital a monthly report of the services provided to Hospital under the terms of this Agreement. The report shall detail at least the following information:

- Date and time service was requested
- Time provider arrived at the scene
- The run numbers

5.11 Dispute Resolution. If a dispute arises among the parties in connection with this Agreement, or any instruments delivered in connection herewith, including without limitation an alleged breach of any representation, warranty or covenant herein or therein, or a disagreement regarding the interpretation of any provision hereof or thereof (the “Dispute”), the parties agree to use the following procedure in good faith prior to any party pursuing other available judicial or non-judicial remedies:

a. A meeting shall be held among the parties within ten (10) days after any party gives written notice of the Dispute to each other party (the “Dispute Notice”) attended by a representative of each party having decision-making authority regarding the Dispute (subject to board of directors or equivalent approval, if required), to attempt in good faith to negotiate a resolution of the Dispute.

b. If, within thirty (30) days after the Dispute Notice, the parties have not succeeded in negotiating a written resolution of the Dispute, upon written request by any party to each other party all parties will promptly negotiate in good faith to jointly appoint a mutually acceptable neutral person not affiliated with any of the parties (the “Neutral”). If all parties so agree in writing, a panel of two or more individuals (such panel also being referred to as the “Neutral”) may be selected by the parties. The parties shall seek assistance in such regard from the American Health Lawyers Association Alternative Dispute Resolution Service if they have been unable to agree upon such appointment within forty (40) days after the Dispute Notice. The fees and costs of the Neutral and of any such assistance shall be shared equally among the parties.

c. In consultation with the Neutral, the parties will negotiate in good faith to select or devise a nonbinding alternative dispute resolution procedure (“ADR”) by which they will attempt to resolve the Dispute, and a time and place for the ADR to be held, with the Neutral (at the written request of any party to each other party) making the decision as to the procedure and/or place and time if the parties have been unable to agree on any of such matters in writing within ten (10) days after selection of the Neutral.

d. The parties agree to participate in good faith in the ADR to its conclusion; provided, however, that no party shall be obligated to continue to participate in the ADR if the parties have not resolved the Dispute in writing within one hundred twenty (120) days after the Dispute Notice and any party shall have terminated the ADR by delivery written notice of termination to each other party following expiration of said 120-day period. Following any such termination notice after selection of the Neutral, and if any party so requests in writing to the Neutral (with a copy to each other party), then the Neutral shall make a recommended resolution of the Dispute in writing to each party, which recommendation shall not be binding upon the parties; provided, however, that the parties shall give good faith consideration to the settlement of the Dispute on the basis of such recommendation.

e. Notwithstanding anything herein to the contrary, nothing in this Section shall preclude any party from seeking interim or provisional relief, in the form of a temporary restraining order, preliminary injunction or other interim equitable relief concerning the Dispute, either prior to or during the ADR process if necessary to protect the interests of such party. Further, this Section shall be specifically enforceable.

f. At the reasonable request of either party, the Neutral shall adopt rules and procedures designed to expedite the dispute resolution process.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their authorized representatives on the day and year first above written.

**Transporter**

**Hospital**

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**Attachment “A”**

**Schedule of Payments For Transport Services Provided By Transporter To  
Tallahassee Medical Center, Inc. d/b/a Capital Regional Medical Center  
Effective \_\_\_\_\_, 2020**

- 1) For all patients that are transported by Transporter from Hospital’s Gadsden Facility to Hospital’s Tallahassee location at 2626 Capital Medical Boulevard, Tallahassee, Florida, and for whom there is no other payer, Hospital will pay Transporter the Medicare allowable rate, including the copay amount.
- 2) For patients who are uninsured or for whom insurance has refused to pay after reasonable efforts and the transport to an acute care hospital from Hospital’s Gadsden County Facility is more than 75 miles, Hospital will pay Transporter the applicable Medicare allowable rate for that patient, including the copay amount.
- 3) For patients who are uninsured or for whom insurance has refused to pay after reasonable efforts and who are designated as “Trauma Alert,” “STEMI Alert” or “Stroke Alert”, Hospital will pay Transporter the applicable Medicare allowable rate for that patient, including the copay amount.
- 4) Except for those patients referenced above, for patients who are transferred from Hospital’s Gadsden Facility to any unaffiliated hospital or health care facility, Hospital shall have no financial responsibility or obligation.