Board of Directors Meetings

Thursday, May 30, 2019
1:00 p.m.
AGENDA
BOARD OF DIRECTORS MEETING
MAY 30, 2019 AT 1:00 p.m.
Gulf Coast Medical Center – Boardroom (Medical Office Building)
13685 Doctor’s Way, Ft. Myers, FL 33912

1. Call to Order – Stephen Brown, MD, Board Chairman
   The Board of Lee Memorial Health System, doing business as Lee Health, Gulf Coast Medical Center & Lee Memorial Hospital/HealthPark Medical Center and the Board of Directors of its subsidiary corporations, including but not limited to Cape Memorial Hospital, Inc. doing business as Cape Coral Hospital; Lee Memorial Home Health, Inc.; and HealthPark Care Center, Inc.

2. Invocation & Pledge of Allegiance (Mike Warthen, MDiv, BCC)

3. Public Input
   Agenda Items: Any Public Input is limited to three minutes and a “Request to Address the Board of Directors” card must be completed and submitted to the Board Staff prior to meeting. Individuals wishing to address the Board on a Non-Agenda item must notify the Board Staff of the subject matter at least three (3) days prior to the meeting.

4. Consent Agenda (Approve)
   a. Board Meeting Minutes of 4/25/19
   b. Regulatory Approvals
      i. Risk Management Report

5. President’s Report – (Larry Antonucci, President/CEO) (Discuss)

6. Physician Leadership Council Update – (William Hearn, D.O., PLC Chairman) (Discuss)

7. Medical Staff Credentialing (Approve)
   a. Lee Memorial Hospital
   b. Cape Coral Hospital
   c. Gulf Coast Medical Center
   d. HealthPark Medical Center
   e. Golisano Children’s Hospital of SWFL

8. Governance Task Force Update (Stephen Brown, MD, Board Chair and GTF Chair) (Discuss)
   a. Physician Members of Committees (Approve)
AGENDA
BOARD OF DIRECTORS MEETING 5/30/19
(Approve)

b. Community Members of Committees
   i. Audit
   ii. Community Health Improvement
   iii. Finance

c. Board Policy 10.27G Reporting and Accreditation – Revised (Approve)

d. Board Policy 20.06D Contracts (Purchase, Sale, Transfer or Lease) – Revised (Approve)

e. Strategy Update (Steve Brown, MD Board Chair, Larry Antonucci, MD, President & CEO)

9. Population Health Update – (John Chomeau, Chief Population Health Officer) (Discuss)
   a. Best Care Assurance LLC & Best Care Collaborative LLC Operating Agreement Amendments (Approve)

10. Committees’ Summaries and Recommendations
   a. Executive Summaries (Written)
      i. Finance and Investment
         1. SEI Investment Performance Report
         2. Budget 2020 Financial Projections and Ratio Targets
   b. Verbal Update (David Collins, Committee Chair)
   c. Recommended Actions
      i. 3 Year Construction Continuing Services Agreements (CCNA) (Approve)
         1. Acute Care
         2. Outpatient
      ii. Budget 2020 Operating Margin Target & Budget Assumptions (Approve)
      iii. Employee Total Rewards Program 2020 (Approve)
      iv. License Agreement for Parking Spaces (Approve)

11. Board Meeting Evaluation

12. Adjourn
AGENDA
BOARD OF DIRECTORS MEETING 5/30/19

Date of the next Meeting:
June 27, 2019 at 1:00 p.m.

Board of Directors
Gulf Coast Medical Center – Boardroom

13685 Doctors Way, Ft. Myers, FL 33912
BOARD OF DIRECTORS

Invocation & Pledge of Allegiance
BOARD OF DIRECTORS

PUBLIC INPUT

AGENDA ITEMS:

Any public input pertaining to items on the Agenda is limited to three minutes and a “Request to Address the Board of Directors” card should be completed and submitted to the Board Staff prior to meeting.

Refer to Board Policy: 10:15H: Public Addressing the Board

Non-Agenda Item:

Individuals wishing to address the Board on an item NOT on the Agenda, the Board office must be notified of subject matter at least three (3) days prior to the meeting to allow staff time to prepare and to insure the matter is within the jurisdiction of the Board.

Lee Memorial Health System Board of Directors
BOARD OF DIRECTORS

CONSENT AGENDA

(APPROVE)

a) Finance & Full Board Meeting Minutes of 4/25/19

b) Regulatory Approval
   i. Risk Management Report
# BOARD OF DIRECTORS MEETING MINUTES

**Thursday, April 25, 2019**

**LOCATION:** Gulf Coast Medical Center, Medical Office Building, Board of Directors Boardroom, 13685 Doctors Way, Fort Myers, FL 33912

**MEMBERS PRESENT:** Stephen Brown, M.D., Board Chairman; Donna Clarke, Board Vice Chairman; David Collins, Board Treasurer; Therese Everly, Board Secretary; Sanford N. Cohen, M.D., Board Member; Chris Hansen, Board Member; Stephanie Meyer, BSN, RN, Board Member; Nancy McGovern, RN, MSM, Board Member; Diane Champion, Board Member

**MEMBERS ABSENT:** Jessica Carter Peer, Board Member

*NOTE: Documents referred to in these minutes are on file by reference to this meeting date in the Office of the Board of Directors and on the Board of Directors website at www.leehealth.org/boardofdirectors, for public inspection.*

<table>
<thead>
<tr>
<th>SUBJECT</th>
<th>DISCUSSION</th>
<th>ACTION</th>
<th>FOLLOW-UP</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>MEETING CALLED TO ORDER</strong></td>
<td></td>
<td>FULL BOARD OF DIRECTORS MEETING was CALLED TO ORDER at 1:00 p.m. by Stephen Brown, M.D., Board Chairman.</td>
<td></td>
</tr>
<tr>
<td><strong>INVOCATION AND PLEDGE OF ALLEGIANCE</strong></td>
<td>Rev. Denise Sawyer, MDiv, gave the Invocation, followed by the Pledge of Allegiance</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>PUBLIC INPUT</strong></td>
<td>None at this time.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>CONSENT AGENDA</strong></td>
<td>Dr. Brown asked for approval of the Consent Agenda.</td>
<td>A motion was made by Therese Everly to approve the Consent Agenda consisting of:</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>a. Finance &amp; Full Board Meeting Minutes of 3/21/19</td>
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<td></td>
<td></td>
<td>The motion was seconded by Dr. Cohen and carried with no opposition.</td>
<td></td>
</tr>
<tr>
<td><strong>PRESIDENT'S REPORT</strong></td>
<td>Larry Antonucci, M.D., President &amp; CEO presented the President’s Report. Larry extended Board Members an invitation to attend the next Leadership Update Meeting on May 22th.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>PHYSICIAN LEADERSHIP COUNCIL UPDATE</strong></td>
<td>No report.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>MEDICAL STAFF CREDENTIALING</strong></td>
<td>Dr. Brown asked for approval of the Medical Staff Credentialing.</td>
<td>A motion was made by Therese Everly to approve the Medical Staff Credentialing. The motion was seconded by Nancy McGovern and carried with no opposition.</td>
<td></td>
</tr>
<tr>
<td><strong>GOVERNANCE TASK FORCE UPDATE</strong></td>
<td>Mary McGillicuddy reviewed the Governance Task Force Updates. Discussion ensued over the transition of the Governance Task Force to the Governance Committee. Dr. Brown asked for approval of the Governance Task Force Recommended Actions.</td>
<td>A motion was made by Donna Clarke to approve the Board Committee Community and Physician Member Appointment Process Policy. The motion was seconded by Chris Hansen and carried with no opposition.</td>
<td></td>
</tr>
<tr>
<td>SUBJECT</td>
<td>DISCUSSION</td>
<td>ACTION</td>
<td>FOLLOW-UP</td>
</tr>
<tr>
<td>---------</td>
<td>------------</td>
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<tr>
<td></td>
<td>Therese Everly thanked the Physician Members for attending the Quality, Safety &amp; Patient Experience Committee as a guest prior to the Board Meeting and looks forward to working with everyone.</td>
<td>A motion was made by Donna Clarke to approve the recommended prospective Physician Members for the Board’s Quality, Safety and Patient Experience Committee. The motion was seconded by Nancy McGovern and carried with no opposition. A motion was made by Donna Clarke to approve the Appendix to Board Omnibus Policy on Committees. The motion was seconded by Nancy McGovern and carried with no opposition. A motion was made by Donna Clarke to approve the revised Strategic Planning Process Policy (no. 10.44B). The motion was seconded by Chris Hansen and carried with no opposition.</td>
<td></td>
</tr>
</tbody>
</table>

**ROLE OF THE BOARD IN STRATEGY**

Pam Knecht reviewed the Role of the Board in Strategy.

Donna Clarke stated she believes there should be an education agenda item prior to the Board Meeting which the approval will take place.

Therese Everly requested clarification on the decision-making processes regarding facility safety. Advice from board and system counsel, a meeting with Dr. Antonucci to be set.

Discussion ensued over potential Strategy topics and boards ability to present new business.

David Collins, Therese Everly, Donna Clarke and Dr. Cohen stated they would like to see two closed sessions for Strategic discussion on an annual basis.

Board Members requested their feedback be brought to the next Governance Task Force Meeting for further discussion.

**COMMITTEES’ SUMMARIES AND RECOMMENDATIONS**

Therese Everly presented the Quality, Safety & Patient Experience Committee Executive Summary.

Stephanie Meyer departed at 2:47 p.m.

**BOARD MEETING EVALUATION**

Very informative, good meeting.

Board Members congratulated and thanked Therese Everly and the Quality, Safety & Patient Experience Committee Members for their work.

Larry Antonucci gave a Legislative Update and announced that Lee Health has been approved for a HMO License.

**NEXT REGULAR MEETING**

The next LEE HEALTH BOARD OF DIRECTORS & TRAUMA DISTRICT MEETING will be held on May 30, 2019, at 1:00 p.m. in the Gulf Coast Medical Center, Medical Office Building, Boardroom 13685 Doctors Way, Fort Myers, FL 33912

**ADJOURNMENT**

The LEE HEALTH SYSTEM BOARD OF DIRECTORS MEETINGS ADJOURNED at 2:57 p.m. by Stephen Brown, M.D., Board Chairman.

Minutes were recorded by Jennifer Zager, Board of Directors Assistant
DATE: 5/30/2019

LEGAL SERVICE REVIEW? YES_X_ NO__

SUBJECT: Quarterly Risk Management Report

REQUESTOR & TITLE: Mary McGillicuddy, Chief Legal Officer and Mary Lorah, Risk Manager

PREVIOUS BOARD ACTION ON THIS ITEM (IF ANY)
(Justification and/or background for recommendations – internal groups which support the recommendation)
The Board of Directors reviews the Quarterly Risk Management Report on a quarterly basis.

SPECIFIC PROPOSED MOTION:
Motion to approve the Quarterly Risk Management Report as presented.

FINANCIAL IMPLICATIONS
Budgeted Account ____ Non-Budgeted ____
(Annual Project Budget and Total Project Budget)
None

STAFFING & OPERATIONAL IMPLICATIONS
(Including FTEs, facility needs, etc.)
None

PURPOSE/REASON FOR RECOMMENDATION
See Presentation. This request supports the following Strategic Initiative(s): Excellent Health Outcomes and Strong Financial Results

SUMMARY
(Including alternatives considered, Pros and Cons)
This Quarterly Risk Management Report provides a summary of information about activities of the Risk Management program, including the following:
• Incident and Safety Reporting rate per 1,000 patient days
• Impact per 1,000 patient days
• Categories of reports
• Risk Management participation in LMHS System Committees and Education
• Liability Summary
• Goals
Risk Management Report to the Board of Directors

January – March 2019
Risk Management Program Elements

The Risk Management Program is designed to identify, evaluate and reduce the risk of injury to the patients, personnel, visitors and to reduce the risk of loss to the health system. Risk Managers:

- Review reports, conduct investigations and analyze events in an effort to reduce risks to patients and the frequency and severity of medical malpractice claims; and
- Investigate patient care complaints, provide education, and provide direction in regards to regulatory compliance.

This report includes Risk Management activities for the quarter and includes a summary of patient safety events and reporting rates; adverse incidents under Florida law; impact analysis; report categories; education; claims; general activities; and goals.
Patient Safety Evaluation System

Please Note: Separate from Florida law program requirements, Risk Managers play an integral role in the health system’s Patient Safety Evaluation System, a voluntary program created by federal law. Employees are encouraged to report patient safety or quality concerns by filing a Patient Safety Report which are utilized by Risk Managers who participate in health system patient safety initiatives.
Patient Safety Reporting Rates

This graph shows event and report rates for the system for the last 12 months. The following page shows the reporting rates for each facility.

*Total Number of reports for the second quarter FY2019 was 3723*
Reporting Rate (continued)
Analysis

This graph reflects the percentage of reports that have no impact on the patient. The graph for the fourth quarter indicates that 84.42% (3143) of the reports received involve situations which had no impact on the patient.

Reporting “near misses” is highly encouraged to identify potential areas of improvement. This information allows us to provide data used in our quality improvement activities throughout the system.
Analysis

This graph reflects the reporting rate per 1000 patient days and the rate of patient impact for the five facilities during the quarter.
Categories

This table shows the rate for the categories of reports from January through March 2019 at all five facilities. Rates per 1000 Patient Days are utilized to be consistent with other system reporting.

95% of all reports fall under the Patient Safety Taxonomy. The top five reports in this taxonomy are related to Care, IV Complications, Medication/Other Substance, Conduct, and Patient Falls.

77% of all reported occurrences fall within one of these five categories.

<table>
<thead>
<tr>
<th>Occurrence Type</th>
<th>Total</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADR, confirmed</td>
<td>19</td>
<td>0.16</td>
</tr>
<tr>
<td>ADR, suspected</td>
<td>10</td>
<td>0.09</td>
</tr>
<tr>
<td>Adverse Drug Reaction</td>
<td>29</td>
<td>0.25</td>
</tr>
<tr>
<td>Health Insurance Portability and Accountability Act (HIPAA)</td>
<td>25</td>
<td>0.21</td>
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<tr>
<td>Conduct</td>
<td>419</td>
<td>3.59</td>
</tr>
<tr>
<td>Blood or Blood Product</td>
<td>31</td>
<td>0.27</td>
</tr>
<tr>
<td>Care</td>
<td>851</td>
<td>7.29</td>
</tr>
<tr>
<td>Device or Medical/Surgical Supply...</td>
<td>83</td>
<td>0.71</td>
</tr>
<tr>
<td>Environment</td>
<td>30</td>
<td>0.26</td>
</tr>
<tr>
<td>Fall</td>
<td>330</td>
<td>2.83</td>
</tr>
<tr>
<td>IV Complication</td>
<td>692</td>
<td>5.93</td>
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<tr>
<td>Laboratory</td>
<td>218</td>
<td>1.87</td>
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<tr>
<td>Medication or Other Substance</td>
<td>575</td>
<td>4.93</td>
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<tr>
<td>Other</td>
<td>24</td>
<td>0.21</td>
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<tr>
<td>Perinatal</td>
<td>129</td>
<td>1.11</td>
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<tr>
<td>Pressure Injury/Ulcer</td>
<td>13</td>
<td>0.11</td>
</tr>
<tr>
<td>Radiology</td>
<td>36</td>
<td>0.31</td>
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<tr>
<td>Surgery or Anesthesia</td>
<td>105</td>
<td>0.90</td>
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<tr>
<td>LH - Patient Safety</td>
<td>3536</td>
<td>30.31</td>
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<tr>
<td>Security, Operations and Environment</td>
<td>84</td>
<td>0.72</td>
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<tr>
<td>Visitor Safety</td>
<td>49</td>
<td>0.42</td>
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<tr>
<td>Grand Total</td>
<td>3723</td>
<td>31.91</td>
</tr>
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</table>

During this quarter there was one adverse incident reported to AHCA.
### Safety Classification

<table>
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<tr>
<th>Safety Event Classification</th>
<th>Occurrence Type</th>
<th>JAN</th>
<th>FEB</th>
<th>MAR</th>
<th>Total</th>
<th>Rate</th>
</tr>
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<tbody>
<tr>
<td><strong>NEAR MISS</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Conduct</td>
<td></td>
<td>1</td>
<td>4</td>
<td>2</td>
<td>7</td>
<td>0.06</td>
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<tr>
<td>Blood or Blood Product</td>
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<td>1</td>
<td>3</td>
<td>4</td>
<td>8</td>
<td>0.07</td>
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<tr>
<td>Care</td>
<td></td>
<td>82</td>
<td>68</td>
<td>54</td>
<td>204</td>
<td>1.75</td>
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<tr>
<td>Device or Medical/Surgical Supply...</td>
<td></td>
<td>9</td>
<td>19</td>
<td>8</td>
<td>36</td>
<td>0.31</td>
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<tr>
<td>Environment</td>
<td></td>
<td>5</td>
<td>2</td>
<td>7</td>
<td>14</td>
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<tr>
<td>Fall</td>
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<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>0.01</td>
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<tr>
<td>IV Complication</td>
<td></td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>6</td>
<td>0.05</td>
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<tr>
<td>Laboratory</td>
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<td>43</td>
<td>41</td>
<td>50</td>
<td>134</td>
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<td>Medication or Other Substance</td>
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<td>79</td>
<td>97</td>
<td>83</td>
<td>259</td>
<td>2.22</td>
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<td>Other</td>
<td></td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>4</td>
<td>0.03</td>
</tr>
<tr>
<td>Perinatal</td>
<td></td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>3</td>
<td>0.03</td>
</tr>
<tr>
<td>Pressure Injury/Ulcer</td>
<td></td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0.01</td>
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<tr>
<td>Radiology</td>
<td></td>
<td>1</td>
<td>3</td>
<td>6</td>
<td>10</td>
<td>0.09</td>
</tr>
<tr>
<td>Surgery or Anesthesia</td>
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<td>7</td>
<td>12</td>
<td>6</td>
<td>25</td>
<td>0.21</td>
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<tr>
<td><strong>TOTAL NEAR MISS</strong></td>
<td></td>
<td>232</td>
<td>254</td>
<td>226</td>
<td>712</td>
<td>6.10</td>
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<tr>
<td><strong>PRECURSOR</strong></td>
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<tr>
<td>Blood or Blood Product</td>
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<td>2</td>
<td>6</td>
<td>2</td>
<td>10</td>
<td>0.09</td>
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<tr>
<td>Care</td>
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<td>124</td>
<td>98</td>
<td>121</td>
<td>343</td>
<td>2.94</td>
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<tr>
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<td>8</td>
<td>9</td>
<td>9</td>
<td>26</td>
<td>0.22</td>
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<tr>
<td>Environment</td>
<td></td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>0.03</td>
</tr>
<tr>
<td>Fall</td>
<td></td>
<td>3</td>
<td>1</td>
<td>2</td>
<td>6</td>
<td>0.05</td>
</tr>
<tr>
<td>IV Complication</td>
<td></td>
<td>8</td>
<td>4</td>
<td>9</td>
<td>21</td>
<td>0.18</td>
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<td>23</td>
<td>13</td>
<td>20</td>
<td>56</td>
<td>0.48</td>
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<tr>
<td>Medication or Other Substance</td>
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<td>86</td>
<td>64</td>
<td>99</td>
<td>249</td>
<td>2.13</td>
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<td>Other</td>
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<td>3</td>
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<td>1</td>
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<tr>
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<td>0</td>
<td>3</td>
<td>3</td>
<td>6</td>
<td>0.05</td>
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<td>3</td>
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<td>2</td>
<td>10</td>
<td>0.09</td>
</tr>
<tr>
<td>Surgery or Anesthesia</td>
<td></td>
<td>12</td>
<td>11</td>
<td>10</td>
<td>33</td>
<td>0.28</td>
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<tr>
<td><strong>TOTAL PRECURSOR</strong></td>
<td></td>
<td>276</td>
<td>217</td>
<td>279</td>
<td>772</td>
<td>6.62</td>
</tr>
</tbody>
</table>
Liability

The Second fiscal quarter 2019 (January - March, 2019) ended with 38 pending claims. The quarter saw 15 claims closed and 10 claims opened. Malpractice prevention, patient safety and quality of care improvement continue to be the primary focus of the Health System’s risk managers.
Education Activities

- Risk Management Orientation for new hires
- Defensible Documentation
- Safety Reporting for the Sleep Lab
- CPC Presentations
- Education on use of Chaperones for Radiology Leadership
- Fall Safety
- Pre-Procedural Testing
- Student RN Risk/Safety Presentation
Risk Management Activities

Continued participation in system patient safety activities including:

- Daily Safety Check-In Calls
- System Medication Safety Committee
- Campus Specific Medication Safety Work Teams
- GCHSWF Leadership Quality Council
- DNV Participation
- Telemetry Leadership Team
- Executive Quality Safety Management Council
- Campus Specific Facility Quality Committees
- Diversions Operations Committee
- New Employee Orientation Workgroup
- Participated in various Root and Apparent Cause Analysis Teams
- Policy & Procedure Committee
- Transport Directors and Role in Safety
- Customer Improvement Team
- Safety Governance Council
- HIV Consent Process Change
Risk Management Goals

• Continue to track and trend patient safety events, adverse incidents, provide summary data and work closely with various departments and committees engaged in performance improvement and patient safety activities.
• Continue to work with Education and Organizational Development and management staff to assure that all employees are meeting the annual education requirement for risk management and to provide a module to meet the annual requirement.
• Continue to utilize pre-litigation procedures to resolve meritorious claims in a timely manner.
• Continue to collaborate with others in the Health System with regard to patient safety initiatives and make recommendations based on trends.
Thank You
BOAORD OF DIRECTORS

PRESIDENT’S REPORT

Larry Antonucci, MD, President & CEO
President’s Report

- HCAHPS Review
- Exceptional Lee Town Halls
- Physician Engagement
- Charge Nurse Leadership Program
- Harmful Algal Blooms Roundtable
- Florida Physician Survey
- Primary Care challenges
- Physician Compare
- Uninsured Continues to Grow
- Social Determinants
- Post Hospital Recovery-Where?
- ASC Quality Reporting
- Bed Utilization Trends
- New Tech
- Colorado’s Marijuana Experience
HCAHPS TRENDS and COMPETITORS

May 3, 2019

Prepared by Planning & Strategy
---Hospitals in the South Atlantic Division, where Florida resides, have scores lower than the national average, 70% vs 73.

Data is 12-months ending June 2018. Source: CMS Hospital Compare. Prepared by Planning & Strategy
Given the performance of hospitals in the South Atlantic Division, it is not surprising to see hospitals in Florida average lower than the national average.

Florida is 1 point below the South Atlantic Division average.
--Hospitals on average need to increase top box scores by three points to move to the next decile.
--For example, from 50th to 60th percentile, the top box % is 73.0% to 75.4%.
--As shown on next slide, the national average increases approximately 1 point per year.
Nationally, top box scores have increased by 8 points over the past nine years in "overall rate this hospital 9-10%".

The annual increase is approximately 1 point per year.

This 8-point increase is consistent at the different percentile thresholds.

2018 may be a peak since 2017 and 2018 are the same, and 25th declined 1 point.
--LH has increased as well over the past 9 years.
--Most years, though, LH is trending under 25th percentile.
--2014 was LH's highest performance year, but trended down through 2016.
--The last two years have shown modest improvement.
--All LH hospitals have increased over the past nine years.
--With LMH and HPMC combined, this "campus" is the highest for LH in the CMS database.
Exhibit 7
HCAHPS OVERALL RATE 9-10%
Top Box Percentage Trend
9-year Trend - Lee Health Hospitals - Internal data
Created on: May 3, 2019

--Using internal data reports from Press Ganey/NRC, HPMC is the highest campus.

Data is 12-months ending March 20XX. Source: Internal reports from Press Ganey & NRC.
Prepared by Planning & Strategy
V:\Share\Patient Satisfaction\NRC\Special Projects\FY 2019\HCAHPS Trends and Competitors\Exhibits-LH Trend - internal
Exhibit 8
HCAHPS OVERALL RATE 9-10%
Top Box Percentage Trend
9-year Trend - LH vs Local vs SNHAF
Created on: May 3, 2019

--LH performs above the local area hospitals but below the SNHAF hospitals.
--SNHAF hospitals rank near the 55th percentile.
--LH hospitals rank near the 25th percentile.
--Local hospitals rank under the 10th percentile.
Exhibit 9
HCAHPS OVERALL RATE 9-10%
Top Box Percentage Trend
2009 and 2018 -- LH vs Local Hospitals
Created on: May 3, 2019

--Excluding Englewood, LH has the highest preforming hospitals in the local area.

Data is 12-months ending June 2009 and June 2019. Source: CMS Hospital Compare.
Prepared by Planning & Strategy

V:\Share\Patient Satisfaction\NRC\Special Projects\FY 2019\HCAHPS Trends and Competitors\Exhibits-Local
## Exhibit 10
**HCAHPS OVERALL RATE 9-10%**

### Top Box Percentage Trend

**2009 and 2018 -- LH vs SNHAF Hospital Systems**

Created on: May 3, 2019

---

Sacred Hrt | 79% |
--- | --- |
Sarasota | 68% |
Tampa Gen | 57% |
Orl Health | 68% |
Memorial | 72% |
St. Vincent | 65% |
UF Health | 68% |
Broward | 58% |
Jackson Mem | 62% |
LH | 56% |
Mt Sinai | 54% |
Halifax | 56% |

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--Sacred Heart and Sarasota Memorial are the two highest performing systems.
--Tampa General has increased its scores 20 points from a low of 57% to current 77%.
--See Exhibit 12 for map.

---

Data is 12-months ending June 2009 and June 2019. Source: CMS Hospital Compare.
Prepared by Planning & Strategy
--At the hospital level, two Memorial Healthcare hospitals rank near the top with two Sacred Heart Hospitals and Sarasota.
--See Exhibit 12 for map.
Exhibit 12
MAP OF SNHAF HOSPITALS

Created on: May 3, 2019
PHYSICIAN LEADERSHIP COUNCIL UPDATE

(William Hearn, D.O, PLC Chairman)
BOARD OF DIRECTORS

MEDICAL STAFF CREDENTIALING

(APPROVE)

a) Lee Memorial Hospital
b) Cape Coral Hospital
c) Gulf Coast Medical Center
d) HealthPark Medical Center
e) Golisano Children’s Hospital of SWFL
MEMORANDUM

To: Board of Directors

From: Nancy A. Taylor, CPMSM, CPCS
Director, Centralized Credentialing Services

Date: May 22, 2019

Subject: Lee Memorial Hospital Medical Staff Recommendations

The Facility Medical Executive Committee of the Medical Staff recommends the following physicians and allied health practitioners and certifies they have met the requirements set forth in the bylaws:

1. Associate Staff Appointment:
   a. Motaz Al-Hafnawi, M.D. – Gastroenterology
   b. Thomas Ball, M.D. – Internal Medicine
   c. Maria Becka-Fitzpatrick, D.O. – Internal Medicine
   d. Michael Fromke, M.D. – Neurosurgery
   e. Jane Park, M.D. – Internal Medicine
   f. Natalie Rivera Morales, Ph.D. – Psychology

2. Privileges Only Appointment:
   a. Bernadette Borte, M.D. – Teleneurology
   b. Amanda Cheshire, M.D. – Teleneurology
   c. Nordeli Estronza, M.D. – Teleneurology

3. Temporary Privileges:
   a. Fahim Habib, M.D. – Trauma Surgery, 05-20-19 – 06-18-19

4. Resignations:
   a. Warren Hutcheson, M.D. – Pediatric Emergency Medicine, effective 04-18-19
   b. Jason Lakatos, D.O. – Internal Medicine, effective 04-18-19
   c. Ojash Raval, D.O. – Family Medicine, effective 03-30-19
   d. Eugene Mahaney, M.D. – Pain Management, effective 05-01-19
   e. Velimir Micovic, M.D. – Pain Management, effective 05-01-19
   f. Gilberto Acosta, M.D. – Pain Management, effective 05-01-19
   g. Adam Shuster, D.O. – Pain Management, effective 05-01-19
   h. Timothy Replogle, M.D. – Pain Management, effective 05-01-19
   i. David Greschler, M.D. – Pain Management, effective 05-01-19

5. Leave of Absence:
   a. Stephen Fedec, D.O. – Cardiology, personal leave 06-01-19 – 05-31-20
   b. Nelayda Fonte, D.O. – Trauma Surgery, additional 6 months 06-09-19 - 01-08-20
   c. Douglas Henricks, M.D. – Internal Medicine, personal leave 05-01-19 – 05-01-20
   d. Ernst Vieux, Jr., M.D. – Trauma Surgery, personal leave 06-01-19 – 05-30-20
   e. Jeannette Lopiano, M.D. – return from maternity leave, effective 04-29-19
6. Privilege Requests:
   a. **Luis Guerrero, M.D.** –
      - Diagnosis & Treatment of chronic pain and cancer related pain
      - Management of chronic headache
      - Modality therapy and physical therapy
      - Prevention, recognition, an management of local anesthetic overdose, including airway management & resuscitation
      - Recognition and management of therapies, side effects, and complications of pharmacologic agents used in management of pain
      - Rehabilitative and restorative therapy
      - Stress management and relaxation techniques
      - Superficial electrical stimulation techniques
   b. **James Kasiewicz, M.D.** – Class III Deep Sedation
   c. **Robert O’Connor, M.D.** – Class III Deep Sedation
   d. **Daryl Tanski, M.D.** – Inpatient Psychiatry privileges

7. First Year Completions:

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8. **Advanced Practice Providers:**
   a. [Jafet Baxter, APRN](#) – Gulf Shore Internal Medicine
   b. [Jessica Burke, APRN](#) – Florida Cancer Specialists
   c. [Sandra Craig, APRN](#) – Lee Wound Care
   d. [Samantha Head, APRN](#) – LPG Pulmonary Associates
   e. [Amy LaBron, APRN](#) – LPG Pain Management
   f. [Kirsten Lamb, APRN](#) – LPG House Calls
   g. [Jonathan Michaelis, PA](#) – Axel Health
   h. [Annie Millis, APRN](#) – Axel Health
   i. [Andrea Perkins, APRN](#) – LPG at College Pointe
   j. [Tiara Phillips, APRN](#) – LPG Pulmonary Associates

9. **Advanced Practice Providers – Sponsor Change:**
   b. [Marissa Roberts, APRN](#) – LMHS FSU Family Medicine Residency Program

10. **Advanced Practice Provider – Additional Sponsor:**
    a. [Ken Miller, PA](#) – LPG Orthopedics

Approved by the Board of Directors – May 30, 2019

______________________________
Stephen R. Brown, M.D., Chairman - Board of Directors
To: Board of Directors

From: Nancy A. Taylor, CPMSM, CPCS
Director, Centralized Credentialing Services

Subject: Cape Coral Hospital
Medical Staff Recommendations

Date: May 22, 2019

The Facility Medical Executive Committee of the Medical Staff recommends the following physicians and allied health practitioners and certifies they have met the requirements set forth in the bylaws:

1. Associate Staff Appointment:
   a. Motaz Al-Hafnawi, M.D. – Gastroenterology
   b. Maria Becka-Fitzpatrick, D.O. – Internal Medicine
   c. Michael Fromke, M.D. – Neurosurgery

2. Privileges Only Appointment:
   a. Bernadette Borte, M.D. – Teleneurology
   b. Amanda Cheshire, M.D. – Teleneurology
   c. Nordeli Estronza, M.D. – Teleneurology

3. Resignations:
   a. Jason Lakatos, D.O. – Internal Medicine, effective 04-18-19

4. Privilege Requests:
   a. Luis Guerrero, M.D. –
      • Diagnosis & Treatment of chronic pain and cancer related pain
      • Management of chronic headache
      • Modality therapy and physical therapy
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      • Superficial electrical stimulation techniques
   b. Daryl Tanski, M.D. – Inpatient Psychiatry privileges
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   d. **Samantha Head, APRN** – LPG Pulmonary Associates
   e. **Amy LaBron, APRN** – LPG Pain Management
   f. **Mark Lucero, PA** – CCH ER Physicians
   g. **Tiara Phillips, APRN** – LPG Pulmonary Associates

7. **Advanced Practice Providers – Intrasystem/Sponsor Change:**
   a. **Sharon Occhino, APRN** – LPG Palliative Care

8. **Advanced Practice Provider – Additional Sponsor:**
   a. **Alexandria Erickson, PA** – CCH ER Physicians

Approved by the Board of Directors – May 30, 2019

_____________________________
Stephen R. Brown, M.D., Chairman - Board of Directors
MEMORANDUM

To: Board of Directors
From: Nancy A. Taylor, CPMSM, CPCS
   Director, Centralized Credentialing Services
Subject: Gulf Coast Medical Center
   Medical Staff Recommendations
Date: May 22, 2019

The Facility Medical Executive Committee of the Medical Staff recommends the following physicians and allied health practitioners and certifies they have met the requirements set forth in the bylaws:

1. Associate Staff Appointment:
   a. Maria Becka-Fitzpatrick, D.O. – Internal Medicine
   b. Michael Fromke, M.D. – Neurosurgery
   c. Steffen White, M.D. – Anesthesiology

2. Privileges Only Appointment:
   a. Bernadette Borte, M.D. – Teleneurology
   b. Amanda Cheshire, M.D. – Teleneurology
   c. Nordeli Estronza, M.D. – Teleneurology

3. Resignation:
   a. Amit Mukhia, M.D. – Neonatology, effective 12-31-18

4. Leave of Absence:
   a. Stephen Fedec, D.O. – Cardiology, personal leave 06-01-19 – 05-31-20
   b. Douglas Henricks, M.D. – Internal Medicine, personal leave 05-01-19 – 05-01-20

5. Privilege Requests:
   a. Luis Guerrero, M.D. –
      • Diagnosis & Treatment of chronic pain and cancer related pain
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   d. **Amy LaBron, APRN** – LPG Pain Management
   e. **Jonathan Michaelis, PA** – Axel Health
   f. **Annie Millis, APRN** – Axel Health

8. **Advanced Practice Providers – Intrasystem/Sponsor Change:**
   a. **Sharon Occhino, APRN** – LPG Palliative Care

9. **Advanced Practice Provider – Additional Sponsor:**
   a. **Ken Miller, PA** – LPG Orthopedics

Approved by the Board of Directors – May 30, 2019

______________________________
Stephen R. Brown, M.D., Chairman - Board of Directors
MEMORANDUM

To:   Board of Directors
From:   Nancy A. Taylor, CPMSM, CPCS
        Director, Centralized Credentialing Services
Date:   May 22, 2019
Subject:  HealthPark Medical Center Medical Staff Recommendations

The Facility Medical Executive Committee of the Medical Staff recommends the following physicians and allied health practitioners and certifies they have met the requirements set forth in the bylaws:

1.  Associate Staff Appointment:
   a.  Motaz Al-Hafnawi, M.D.  – Gastroenterology
   b.  Maria Becka-Fitzpatrick, D.O.  – Internal Medicine
   c.  Michael Fromke, M.D.  – Neurosurgery

2.  Privileges Only Appointment:
   a.  Bernadette Borte, M.D.  – Teleneurology
   b.  Amanda Cheshire, M.D.  – Teleneurology
   c.  Nordeli Estronza, M.D.  – Teleneurology

3.  Intrasystem Application:
   a.  Aldene McKenzie, D.O.  – Family Medicine

4.  Temporary Privileges:
   a.  Fahim Habib, M.D.  – Trauma Surgery, 05-20-19 – 06-18-19

5.  Resignations:
   a.  Warren Hutcheson, M.D.  – Pediatric Emergency Medicine, effective 04-18-19
   b.  Jason Lakatos, D.O.  – Internal Medicine, effective 04-18-19
   c.  Amit Mukhia, M.D.  – Neonatology, effective 12-31-18
   d.  Eugene Mahaney, M.D.  – Pain Management, effective 05-01-19
   e.  Velimir Micovic, M.D.  – Pain Management, effective 05-01-19
   f.  Gilberto Acosta, M.D.  – Pain Management, effective 05-01-19
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      - Stress management and relaxation techniques
      - Superficial electrical stimulation techniques
   
   b. **Sheldon Brownstein, M.D.** – Inpatient Cardiology privileges
   
   c. **James Kasiewicz, M.D.** – Class III Deep Sedation
   
   d. **Robert O’Connor, M.D.** – Class III Deep Sedation
   
   e. **Krunal Patel, M.D.** – Percutaneous Tracheostomy
   
   f. **Daryl Tanski, M.D.** – Inpatient Psychiatry privileges

8. First Year Completions:

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<td>Samaan, Maged, M.D.</td>
<td>Critical Care</td>
<td>GCMC</td>
<td>Active</td>
</tr>
<tr>
<td>Sanchious, Alyson M.D.</td>
<td>Family Medicine Refer &amp; Follow</td>
<td>CCH GCMC HPMC LMH</td>
<td>Associate Associate Associate Associate</td>
</tr>
<tr>
<td>Sethi, Ashwani, M.D.</td>
<td>Gastroenterology</td>
<td>HPMC LMH</td>
<td>Active</td>
</tr>
</tbody>
</table>

9. **Advanced Practice Providers:**
   a. **Jafet Baxter, APRN** – Gulf Shore Internal Medicine
   b. **Jessica Burke, APRN** – Florida Cancer Specialists
   c. **Sandra Craig, APRN** – Lee Wound Care
   d. **Amy LaBron, APRN** – LPG Pain Management
   e. **Jonathan Michaelis, PA** – Axel Health
   f. **Annie Millis, APRN** – Axel Health

10. **Advanced Practice Providers – Intrasytem/Sponsor Change:**
    a. **Sharon Occhino, APRN** – LPG Palliative Care

**Approved by the Board of Directors – May 30, 2019**

*Stephen R. Brown, M.D., Chairman - Board of Directors*
To: Board of Directors

From: Nancy A. Taylor, CPMSM, CPCS
Director, Centralized Credentialing Services

Date: May 22, 2019

Subject: Golisano Children’s Hospital of Southwest Florida
Medical Staff Recommendations

The Facility Medical Executive Committee of the Medical Staff recommends the following physicians and allied health practitioners and certifies they have met the requirements set forth in the bylaws:

1. Associate Staff Appointment:
   a. Susan King, Psy.D. – Psychology

2. Privileges Only Appointment:
   a. Bernadette Borte, M.D. – Teleneurology
   b. Amanda Cheshire, M.D. – Teleneurology
   c. Nordeli Estronza, M.D. – Teleneurology
   d. Mariola Idrobo-Cordero, M.D. – Pediatrics
   e. Julio Mendoza Molerio, M.D. – Pediatrics

3. Temporary Privileges:
   a. Ajay Gohil, M.D. – Pediatric Gastroenterology, 04-29-19 – 05-29-19

4. Resignations:
   a. Warren Hutcheson, M.D. – Pediatric Emergency Medicine, effective 04-18-19
   b. Amit Mukhia, M.D. – Neonatology, effective 12-31-18
   c. Eugene Mahaney, M.D. – Pain Management, effective 05-01-19
   d. Velimir Micovic, M.D. – Pain Management, effective 05-01-19
   e. Gilberto Acosta, M.D. – Pain Management, effective 05-01-19
   f. Adam Shuster, D.O. – Pain Management, effective 05-01-19
   g. Timothy Replogle, M.D. – Pain Management, effective 05-01-19
   h. David Greschler, M.D. – Pain Management, effective 05-01-19

5. Leave of Absence:
   a. Jeannette Lopiano, M.D. – return from maternity leave, effective 04-29-19

6. Privilege Request:
   a. Jose G. Diaz, M.D. – Pediatric Emergency Medicine privileges
7. **First Year Completions:**

<table>
<thead>
<tr>
<th>Name</th>
<th>Specialty</th>
<th>Institution</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Horlbeck, Drew M.D.</td>
<td>Otolaryngology</td>
<td>GCMC, GCHSWF, HPMC, LMH</td>
<td>Associate, Active, Associate</td>
</tr>
<tr>
<td>Kiankhooy-Fard, Banafsheh, M.D.</td>
<td>Pediatrics</td>
<td>GCHSWF</td>
<td>Associate</td>
</tr>
<tr>
<td>Nelsen, Brittany, Psy.D.</td>
<td>Psychology</td>
<td>CCH, GCMC, GCHSWF, HPMC, LMH</td>
<td>Associate, Associate, Associate, Associate</td>
</tr>
<tr>
<td>Ruggles, Daniel M.D.</td>
<td>Pediatric Orthopedic Surgery</td>
<td>GCMC, HPMC, GCHSWF</td>
<td>Associate, Active</td>
</tr>
</tbody>
</table>

Approved by the Board of Directors – May 30, 2019

Stephen R. Brown, M.D., Chairman - Board of Directors
GOVERNANCE TASK FORCE UPDATE

(Stephen Brown, MD, Board Chair)

Recommended Actions

a. Physician Members of Committees
b. Community Members of Committees
c. Board Policy 10.27 G Reporting and Accreditation – Revised
d. Board Policy 20.06D Contracts (Purchase, Sale, Transfer or Lease) – Revised
e. Strategy Update

(APPROVE)
MEMORANDUM

Date: May 30, 2019

To: Lee Health Board of Directors

From: Steve Brown, MD, Governance Task Force Chair and Board Chair

Re: Governance Task Force Recommendations for May 30, 2019

The Governance Task Force (GTF) met again on May 17th between 9 am and 3 pm, and is bringing to the Board on May 30, 2019 its recommendations to approve the following:

- Physician Members of Committees
- Community Members of Committees
- Board Policy 10.27G Reporting and Accreditation – Revised
- Board Policy 20.06D Contracts - Revised

In addition, the GTF will provide updates on strategic discussions and the plan to transition its work to the new Governance Committee.

The GTF and I encourage the Board to carefully read all the documents that were provided in preparation for the May 30th meeting including the information that was sent to the Board regarding all the applicants for Community Members of Committees.

As you study these documents, the GTF would like to point out the following:

- The Physician Members of Committees were recommended by the Physician Leadership Council pursuant to Board policy.
- The discussion on the applicants for Community Members of Committees was robust and lengthy. The GTF heard from Board Counsel regarding his evaluation of the applicants’ potential conflicts of interest and they secured input from the relevant Committee Chairs and Administrative Sponsors. During the discussion, the GTF was focused on ensuring that Community Members possess the expertise needed by the Board and administration to help guide Lee Health during these challenging times.
- The GTF is committed to a transparent process, so they have provided to the Board all the materials that the GTF used in its meeting on May 17th. The GTF hopes that the Board members will take the time to study all the materials that have been provided, so that the work of the GTF is not duplicated in the May 30th meeting.
The revised Board Policy on Contracts was first discussed during the November 17, 2018 Board Workshop where it was observed that the Lee Health Board is required to approve some contracts that would normally be approved by management in health systems of similar size. The GTF is suggesting the Board adopt a resolution which authorizes the President and CEO to make certain contracts for the lease of real property in which aggregate payments from the tenant to the landlord in the first year of the lease are projected to be less than $1 million to ensure the Board is spending time on strategic and policy issues.

The GTF is looking forward to discussing their recommendations with the full Board, and hopefully, securing the Board’s approval.
DATE: May 30, 2019

LEGAL SERVICE REVIEW? YES X NO__

SUBJECT: Physician Members to serve on Lee Health Board Committees (Community Health Improvement Committee and Finance & Investment Committee)

REQUESTOR & TITLE: Lee Health Governance Task Force Chair

PREVIOUS BOARD ACTION ON THIS ITEM (IF ANY)

(justification and/or background for recommendations – internal groups which support the recommendation)

On March 21, 2019 the Lee Health Board of Directors approved the creation and implementation of a committee structure including, among other committees, the Community Health Improvement Committee and the Finance & Investment Committee. The composition of each of these committees includes a Physician Member to be recommended by the Physician Leadership Committee.

SPECIFIC PROPOSED MOTION:

Motion to approve the appointment of the following members of the Medical Staff:

- Joanna Muller Carioba, MD to serve as the Physician Member of the Community Health Improvement Committee, and
- William Hearn, DO to serve as the Physician Member of the Finance & Investment Committee

FINANCIAL IMPLICATIONS

Budgeted Account ____ Non-Budgeted ____

(Annual Project Budget and Total Project Budget)

None

STAFFING & OPERATIONAL IMPLICATIONS - Not applicable

(including FTEs, facility needs, etc.)

None

PURPOSE/REASON FOR RECOMMENDATION

To appoint Physician Members of the Community Health Improvement Committee and the Finance & Investment Committee

SUMMARY

(including alternatives considered, Pros and Cons)

The Physician Leadership Council met on May 28, 2019 to consider members of the Medical Staff to serve as Physician Members of the Community Health Improvement Committee and the Finance & Investment Committee of the Lee Health Board of Directors. The Physician Leadership Council’s recommendations are presented to Lee Health Board of Directors for its consideration.
DATE: May 30, 2019

LEGAL SERVICE REVIEW? YES X NO__

SUBJECT: Community Members to serve on the Audit Committee of the Lee Health Board of Directors

REQUESTOR & TITLE: Lee Health & Governance Task Force Chair

PREVIOUS BOARD ACTION ON THIS ITEM (IF ANY) (justification and/or background for recommendations – internal groups which support the recommendation)

On March 21, 2019 the Lee Health Board of Directors approved the creation and implementation of a committee structure including, among other committees, the Audit Committee. The composition of the Audit Committee includes two Community Members who must be able to read and understand fundamental financial statements, have a working familiarity with basic finance and accounting practices, and must also have additional relevant skills as a financial expert, through education or experience, as a public accountant (preferably a CPA), auditor, principal financial officer, controller, or principal accounting officer or other comparable experience or background. At least one Community Member must also have relevant compliance experience.

On April 29, 2019 the Lee Health Board of Directors approved the Board Committee Community and Physician Member Appointment Process Policy which provides that the Governance Committee shall evaluate Community Member applicants, request input from Board Committee Chairs, and make Community Member recommendations to the full Board for consideration. At the April 29, 2019, Board Meeting, the Board of Directors requested that, for now, the Governance Task Force act in place of the Governance Committee for the purposes of evaluation and recommendation of Community Members to the Lee Health Board Committees.

SPECIFIC PROPOSED MOTION:

Motion to approve the appointment of the following Community Members to the Audit Committee of the Lee Health Board of Directors:

- Tami Cindrich, CPA, CHBC, and
- Bill Foster, CPA

FINANCIAL IMPLICATIONS Budgeted Account ____ Non-Budgeted ____

(Annual Project Budget and Total Project Budget)

None

STAFFING & OPERATIONAL IMPLICATIONS - Not applicable

(including FTEs, facility needs, etc.)

None

PURPOSE/REASON FOR RECOMMENDATION

- To appoint Community Members to the Audit Committee

SUMMARY (including alternatives considered, Pros and Cons)

The Governance Task Force met on May 17, 2019 to evaluate applicants to serve as Community Members for the Audit Committee of the Lee Health Board of Directors. The Governance Task Force followed the Board approved process and evaluated the applications and resumes, which included reviewing the education, training and experience required for service on a Board Committee. As part of the evaluation process the Governance Task Force also received input from the Board Committee Chairs and Administrative Sponsors. After careful consideration of the information available for review and a robust discussion, the Governance Task Force’s recommendations are presented to the Lee Health Board of Directors for its consideration.
DATE: May 30, 2019

LEGAL SERVICE REVIEW? YES X  NO__

SUBJECT: Community Members to serve on the Community Health Improvement Committee of the Lee Health Board of Directors

REQUESTOR & TITLE: Lee Health & Governance Task Force Chair

PREVIOUS BOARD ACTION ON THIS ITEM (IF ANY)
(justification and/or background for recommendations – internal groups which support the recommendation)

On March 21, 2019 the Lee Health Board of Directors approved the creation and implementation of a committee structure including, among other committees, the Community Health Improvement Committee. The composition of the Community Health Improvement Committee includes two Community Members who must have an understanding of the health needs of the community served and local programs and strategies designed to meet those needs.

On April 29, 2019 the Lee Health Board of Directors approved the Board Committee Community and Physician Member Appointment Process Policy which provides that the Governance Committee shall evaluate Community Member applicants, request input from Board Committee Chairs, and make Community Member recommendations to the full Board for consideration. At the April 29, 2019, Board Meeting, the Board of Directors requested that, for now, the Governance Task Force act in place of the Governance Committee for the purposes of evaluation and recommendation of Community Members to the Lee Health Board Committees.

SPECIFIC PROPOSED MOTION:

Motion to approve the appointment of the following Community Members to the Community Health Improvement Committee of the Lee Health Board of Directors:

- David Berger, MD, MBA, FACS, and
- Minnie Jackson, RN, BSN, MS

FINANCIAL IMPLICATIONS     Budgeted Account ____    Non-Budgeted ____
(Annual Project Budget and Total Project Budget)
None

STAFFING & OPERATIONAL IMPLICATIONS - Not applicable
(None)

PURPOSE/REASON FOR RECOMMENDATION

- To appoint Community Members to the Community Health Improvement Committee

SUMMARY
(including alternatives considered, Pros and Cons)

The Governance Task Force met on May 17, 2019 to evaluate applicants to serve as Community Members for the Community Health Improvement Committee of the Lee Health Board of Directors. The Governance Task Force followed the Board approved process and evaluated the applications and resumes, which included reviewing the education, training and experience required for service on a Board Committee. As part of the evaluation process the Governance Task Force also received input from the Board Committee Chairs and Administrative Sponsors. After careful consideration of the information available for review and a robust discussion, the Governance Task Force’s recommendations are presented to the Lee Health Board of Directors for its consideration.
DATE: May 30, 2019

SUBJECT: Community Members to serve on the Finance and Investment Committee of the Lee Health Board of Directors

REQUESTOR & TITLE: Lee Health & Governance Task Force Chair

PREVIOUS BOARD ACTION ON THIS ITEM (IF ANY)
(justification and/or background for recommendations – internal groups which support the recommendation)

On March 21, 2019 the Lee Health Board of Directors approved the creation and implementation of a committee structure including, among other committees, the Finance & Investment Committee. The composition of the Finance & Investment Committee includes two Community Members who must be able to read and understand fundamental financial statements, have a working familiarity with basic finance and accounting practices, and must also have additional relevant skills gained from employment experience in finance or accounting, professional certification in accounting, or other comparable experience or background.

On April 29, 2019 the Lee Health Board of Directors approved the Board Committee Community and Physician Member Appointment Process Policy which provides that the Governance Committee shall evaluate Community Member applicants, request input from Board Committee Chairs, and make Community Member recommendations to the full Board for consideration. At the April 29, 2019, Board Meeting, the Board of Directors requested that, for now, the Governance Task Force act in place of the Governance Committee for the purposes of evaluation and recommendation of Community Members to the Lee Health Board Committees.

SPECIFIC PROPOSED MOTION:
Motion to approve the appointment of the following Community Members to the Finance and Investment Committee of the Lee Health Board of Directors:

- Peter Andruszkiewicz, and
- David H. Klein, MBA

FINANCIAL IMPLICATIONS  Budgeted Account ____  Non-Budgeted ____
(Annual Project Budget and Total Project Budget)
None

STAFFING & OPERATIONAL IMPLICATIONS -  Not applicable
(including FTEs, facility needs, etc.)
None

PURPOSE/REASON FOR RECOMMENDATION
• To appoint Community Members to the Finance & Investment Committee

SUMMARY
(including alternatives considered, Pros and Cons)

The Governance Task Force met on May 17, 2019 to evaluate applicants to serve as Community Members for the Finance and Investment Committee of the Lee Health Board of Directors. The Governance Task Force followed the Board approved process and evaluated the applications and resumes, which included reviewing the education, training and experience required for service on a Board Committee. As part of the evaluation process the Governance Task Force also received input from the Board Committee Chairs and Administrative Sponsors. After careful consideration of the information available for review and a robust discussion, the Governance Task Force’s recommendations are presented to the Lee Health Board of Directors for its consideration.
DATE: May 30, 2019

LEGAL SERVICE REVIEW? YES X NO__

SUBJECT: Board Policy 10.27 entitled Reporting and Accreditation

REQUESTOR & TITLE: LMHS Board of Directors Governance Task Force

PREVIOUS BOARD ACTION ON THIS ITEM (IF ANY)
(justification and/or background for recommendations – internal groups which support the recommendation)

As reported to the Board of Directors on April 25, 2019, the Governance Task Force continues to review and recommend updates to Board policies to reflect the Board’s current governance structure and information flow principles.

SPECIFIC PROPOSED MOTION:

Motion to approve Board Policy 10.27 Reporting and Accreditation as presented

FINANCIAL IMPLICATIONS
Budgeted Account ____ Non-Budgeted ____
(Annual Project Budget and Total Project Budget)

None

STAFFING & OPERATIONAL IMPLICATIONS - Not applicable
(including FTEs, facility needs, etc.)

None

PURPOSE/REASON FOR RECOMMENDATION

- To simplify the Board’s policy to reflect the reporting relationship between the health system’s separately organized legal entities

SUMMARY
(including alternatives considered, Pros and Cons)

The policy provides a mechanism for reporting to the Lee Health Board of Directors by certain health system legal entities. If the proposed revisions are approved, the separate legal entities will report to the Lee Health Board in accordance with the entities’ organizational documents. The Governance Task Force considered the proposed revisions at a meeting of the Task Force on May 17, 2019 and voted to recommended approval to the Board of Directors. Two Board Members voted in the affirmative and one Board Member voted in the negative.

Please see Board Counsel’s memorandum to the Governance Task Force dated May 14, 2019.
To: The Governance Task Force
From: Jim Humphrey, Esq., Board Counsel
Date: May 14, 2019
Subject: Proposed Revisions to the Board Policy 10.27H Titled “Reporting and Accreditation”

As reported to the Board of Directors on April 25, 2019, the Governance Task Force (GTF) continues to review and recommend updates to Board policies to reflect the Board’s new governance structure and information flow principles. The following policy is being presented for your consideration at the GTF Meeting on May 17, 2019.

- **Board Policy 10.27H, Titled Reporting and Accreditation**

The purpose of the Policy Change is to provide a mechanism for reporting by certain separately organized health system legal entities and to provide for certain accreditation.

Mary and I, after reviewing organizational documents for all the health system legal entities, believe the current reading of this policy has created some confusion; therefore, with this memo I am proposing revisions which we believe should bring clarity to the document.
If the proposed revisions to Policy No. 10.27H are adopted, the separate entities will report to the Board in accordance with their organizational documents. Since all entities may not have a reporting relationship in which case, I as Board Counsel can maintain an updated list in the board office. With this procedure it should help ensure the reporting requirements are met.

You are receiving a red-line draft prior to the meeting and I will be prepared to discuss the changes and/or answer any questions you may have.

Thank you.
<table>
<thead>
<tr>
<th><strong>Entity</strong></th>
<th><strong>Descriptions</strong></th>
<th><strong>Required Reporting to Lee Health Board of Directors</strong></th>
<th><strong>BOD COMMITTEE</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Subsidiary Corporations</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Best Care Partners, Inc.</strong>&lt;br&gt; <em>d/b/a Innovatus Health&lt;br&gt; Clarion Health</em></td>
<td>Obtain HMO license and Health Care Provider Certificate; establish a Clinically Integrated Network; consider a provider-led Medicare Advantage and/or a commercial employer health insurance plan.</td>
<td>Prepare an annual report of the Corporation’s activities and make it available to the Lee Health.</td>
<td>Finance</td>
</tr>
<tr>
<td><strong>Limited Liability Organizations</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Best Care Assurance, LLC</strong>&lt;br&gt; <em>d/b/a Vivida</em></td>
<td>Provider Service Network</td>
<td>File each year a report on its activities and financial status within thirty (30) days of the Management Board's receipt of its audited financial statements for the previous fiscal year.</td>
<td>Finance</td>
</tr>
<tr>
<td><strong>Best Care Collaborative, LLC</strong></td>
<td>Accountable Care Organization</td>
<td>File each year a report on its activities and financial status within thirty (30) days of the Management Board's receipt of its audited financial statements for the previous fiscal year.</td>
<td>Finance</td>
</tr>
<tr>
<td><strong>Support Organization</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Lee Memorial Health System Foundation, Inc.</strong></td>
<td>Quasi-independent fund-raising entity</td>
<td>• Annual financial statements&lt;br&gt; • Budgeting a part of health system’s budgeting process</td>
<td>Community Health Improvement / Finance</td>
</tr>
</tbody>
</table>
PURPOSE:
To provide a mechanism for reporting by certain separately organized health system legal entities of various System entities, operations, collaborations, and support organizations and to provide for certain accreditation.

POLICY:

Reporting

Separately organized health system legal entities will report, by presentation and/or written submission, in accordance with the applicable entity bylaws, or as requested by the health system Board of Directors.

Board Counsel will maintain an updated list of legal entities on file in the Board of Directors Office to ensure entity reporting requirements are met.

The Board of Directors shall periodically review and accept a report regarding the following:

**Subsidiaries:**
Subsidiary entities such as Cape Memorial Hospital, Inc., d/b/a Cape Coral Hospital; HealthPark Care Center, Inc.; Lee Memorial Home Health, Inc.; Access Medical South, LC will report in accordance with the applicable entity bylaws or as requested by the health system Board of Directors.

**Supporting Organizations:**
Lee Healthcare Resources (report annually)
Lee Memorial Health System Foundation—(semi-annual report per Board Policy 10.24)

**Subagencies, Service Lines, Operating Collaborations and Acute Care Operations:**
Subagencies (such as Auxiliaries), service lines (such as neurosciences) and operational collaborations (such as Graduate Medical Education (GME) Program) will report as requested by the health system Board of Directors. Acute care operations and Lee Physician Services will report to the
Board on a regular basis consistent with the Board’s meeting calendar.

**Business Affiliations** — (report annually)
Bonita Community Health Center (Naples Community Hospital)
LeeSar Purchasing Cooperative (Sarasota Memorial)
Cooperative Services of Florida (CSF) (Sarasota Memorial)

**Accreditation**

Accreditation for System acute care hospitals and post-acute services (such as home health and rehabilitation) will be obtained and maintained from an accreditation organization with deemed status from Centers for Medicare & Medicaid Services (CMS) as approved by the Board of Directors.
PURPOSE:
To provide a mechanism for reporting by certain separately organized health system legal entities and to provide for certain accreditation.

POLICY:

Reporting

Separately organized health system legal entities will report, by presentation and/or written submission, in accordance with the applicable entity bylaws, or as requested by the health system Board of Directors.

Board Counsel will maintain an updated list of legal entities on file in the Board of Directors Office to ensure entity reporting requirements are met.

Accreditation

Accreditation for System acute care hospitals and post-acute services (such as home health and rehabilitation) will be obtained and maintained from an accreditation organization with deemed status from Centers for Medicare & Medicaid Services (CMS) as approved by the Board of Directors.
DATE: 5/30/2019

SUBJECT: Authority to enter into certain real property leases

REQUESTOR & TITLE: LMHS Board of Directors Governance Task Force

PREVIOUS BOARD ACTION ON THIS ITEM (IF ANY)
(justification and/or background for recommendations – internal groups which support the recommendation)

None

SPECIFIC PROPOSED MOTION:

1) Move to approve the proposed amendment to Board Policy 20.06 which provides that the Board may authorize its Chief Executive Officer to approve contracts for purchase, sale, transfer or lease of real property

2) Move to adopt the proposed resolution which authorizes Lee Health’s President/Chief Executive Officer to make certain contracts for lease of real property in which the aggregate payments from the tenant to the landlord in the first year of the lease are projected to be less than $1,000,000

FINANCIAL IMPLICATIONS

Budgeted Account ____ Non-Budgeted X
(Annual Project Budget and Total Project Budget)

None

STAFFING & OPERATIONAL IMPLICATIONS

(including FTEs, facility needs, etc.)

None

PURPOSE/REASON FOR RECOMMENDATION

Governance best practice / Improve information flow

SUMMARY

As reported to the Board of Directors on April 25, 2019, the Governance Task Force (GTF) continues to review and update Board policies to reflect the Board’s new governance structure and information flow principles. The GTF, after considering advice from the Board’s consultant and counsel, recommends approval of the proposed revision to Board Policy 20.06 entitled Contracts (Purchase, Sale, Transfer or Lease), as well as the proposed Resolution to enhance the flow of governance-level information to the Board of Directors.
PURPOSE:
To provide guidelines for the approval of formal written contracts (purchase, sale, transfer or lease).

POLICY:
1. All contracts shall be styled using the legal name: “Lee Memorial Health System”. All contracting involving subsidiaries of Lee Memorial Health System shall indicate in the styling of the contract that it is a subsidiary of the System.

2. All written contracts, except those prepared by or reviewed by the Board’s Attorney, shall be reviewed for legal sufficiency by an attorney in the health system’s Legal Services Department, consistent with the health system’s administrative policy.

3. Contracts for purchase, sale, transfer or lease of real property (land and/or buildings) shall be approved by the Board of Directors, unless the Board of Directors otherwise authorizes its Chief Executive Officer to approve such contracts.

4. All unbudgeted non-capital equipment leases in which the annual lease payments are $500,000 or more must be approved by the Board of Directors.

5. Contracts for the construction or improvement of real property that require the awarding of a professional services contract must abide by Policy 20.15 – Design-Build Contracts.

6. A summary of all new or revised contracts related to the provision of employee benefits shall be reported to the Board of Directors. Formal advance approval of the same by the Board of Directors shall not be required.

7. All other contracts may be approved by the President/CEO or designee without being referred to the Board of Directors.

8. Unless otherwise directed by the Board of Directors, once a contract has been approved as required herein, it shall be signed in accordance with health system administrative policy.
### Reference guide for contract approval requirements

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>PRESIDENT / Chief Executive Officer or Designee</th>
<th>BOARD OF DIRECTORS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Budgeted Capital Items:</strong> Facility projects, Equipment, New Programs, Vendor Services (Board Policy 20.09(1) and 20.06 #4.)</td>
<td>All Budgeted Requests &amp; Qualified Substitutions*</td>
<td>Non-Qualified Substitutions</td>
</tr>
<tr>
<td><strong>Non-budgeted Items:</strong> Facility projects, Equipment, New Programs, Vendor Services (Board Policy 20.09(2))</td>
<td>$500,000 or less</td>
<td>More than $500,000</td>
</tr>
<tr>
<td><strong>Material Changes:</strong> Construction or Remodeling; land or building acquisition; equipment; new program; vendor services (Board Policy 20.09(3))</td>
<td>Cumulative Costs &lt; 10% &amp; less than $100,000</td>
<td>Cumulative Costs &gt; 10% &amp; more than $100,000</td>
</tr>
<tr>
<td><strong>Asset Disposal (Board Policy 20.09(4))</strong></td>
<td>$100,000 or less</td>
<td>More than $100,000</td>
</tr>
<tr>
<td><strong>Real Property Contracts (Board Policy 20.06 #3.)</strong></td>
<td>Chief Executive Officer may approve real property contracts if authorized by the Board</td>
<td>All Generally, all formal contracts for the purchase, sale, transfer or lease of real property require Board approval, unless the Chief Executive Officer has been authorized.</td>
</tr>
</tbody>
</table>

- Qualified substitutions means capital items from the same budget category which are to be used for the same purpose and are of equivalent or lesser cost. (Board Policy 20.09(1))
PURPOSE:
To provide guidelines for the approval of formal written contracts (purchase, sale, transfer or lease).

POLICY:
1. All contracts shall be styled using the legal name: “Lee Memorial Health System”. All contracting involving subsidiaries of Lee Memorial Health System shall indicate in the styling of the contract that it is a subsidiary of the System.

2. All written contracts, except those prepared by or reviewed by the Board’s Attorney, shall be reviewed for legal sufficiency by an attorney in the health system’s Legal Services Department, consistent with the health system’s administrative policy.

3. Contracts for purchase, sale, transfer or lease of real property (land and/or buildings) shall be approved by the Board of Directors, unless the Board of Directors otherwise authorizes its Chief Executive Officer to approve such contracts.

4. All unbudgeted non-capital equipment leases in which the annual lease payments are $500,000 or more must be approved by the Board of Directors.

5. Contracts for the construction or improvement of real property that require the awarding of a professional services contract must abide by Policy 20.15 – Design-Build Contracts.

6. A summary of all new or revised contracts related to the provision of employee benefits shall be reported to the Board of Directors. Formal advance approval of the same by the Board of Directors shall not be required.

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Reference guide for contract approval requirements

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<td>More than $500,000</td>
</tr>
<tr>
<td><strong>Material Changes:</strong> Construction or Remodeling; land or building acquisition; equipment; new program; vendor services (Board Policy 20.09(3))</td>
<td>Cumulative Costs &lt; 10% &amp; less than $100,000</td>
<td>Cumulative Costs &gt; 10% &amp; more than $100,000</td>
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<tr>
<td>Asset Disposal (Board Policy 20.09(4))</td>
<td>$100,000 or less</td>
<td>More than $100,000</td>
</tr>
<tr>
<td>Real Property Contracts (Board Policy 20.06 #3.)</td>
<td>Chief Executive Officer may approve real property contracts if authorized by the Board</td>
<td>Generally, all formal contracts for the purchase, sale, transfer or lease of real property require Board approval, unless the Chief Executive Officer has been authorized.</td>
</tr>
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</table>

- Qualified substitutions means capital items from the same budget category which are to be used for the same purpose and are of equivalent or lesser cost. (Board Policy 20.09(1))
The Board of Directors (“Board”) of Lee Memorial Health System (“Lee Health”), at a meeting held on May 30, 2019, adopts the following resolution concerning real property contracts:

WHEREAS, Lee Health is a public health care system governed by Chapter 2000-439 of the Laws of Florida (“Enabling Legislation”);

WHEREAS, Subsection 4 of Section 10 of the Enabling Legislation authorizes the Board to make contracts of all kind or authorize the Chief Executive Officer of Lee Health to make contracts;

WHEREAS, it is the Board’s current practice to require all contracts for purchase, sale, transfer or lease of real property (land and/or buildings) to be approved by the Board;

WHEREAS, the Board, acting on the advice of its consultants, attorneys, and applicable officers and other personnel having knowledge and experience with real property contracts, believes that it is in the best interests of Lee Health to authorize the President/Chief Executive Officer of Lee Health to make certain real property contracts as further described in this resolution;

NOW, THEREFORE, BE IT RESOLVED THAT:

The Board authorizes the President/Chief Executive Officer of Lee Health to approve contracts for lease of real property in which the aggregate payments from the tenant to the landlord in the first year of the lease are projected to be less than $1,000,000.

THIS RESOLUTION has been adopted by the Board effective May 30, 2019.
STRATEGY UPDATE
(Steve Brown, MD, Board Chair and Larry Antonucci, MD, President & CEO)

a. Strategy Topics

b. Strategic Planning Retreat

Verbal
POPULATION HEALTH UPDATE

(John Chomeau, Chief Population Health Officer)

1. Best Care Assurance LLC & Best Care Collaborative LLC Operating Agreement Amendments
Clinical Integration Update
John Chomeau, Chief Population Health Officer
Joby Kolsun, Vice President Clinical Performance
May 30, 2019
### Nationwide CIN Growth:

<table>
<thead>
<tr>
<th>Model</th>
<th>↑↓</th>
<th>Trends</th>
</tr>
</thead>
</table>
| Clinically Integrated Networks| ![Arrow Up]  | • Major momentum in many/most markets  
• Drivers different by market “type”  
• Some cross-system collaborations  
• Some IPA/Physician lead models, but mostly hospital / system supported |
| ACOs and Full Risk Contracts  | ![Arrow Up]  | • Commercial, Medicare and Medicaid  
• MSSP growing, Next Gen and Track 3  
• Medicaid capitation in some states and expanding  
• Data sharing and targets/benchmark still difficult  
• Methodology confusing |
| Provider-Sponsored Plans      | ![Arrow Up]  | • Health Systems focused on MA and Medicaid Provider Sponsored Health  
• Joint ventures with 3rd party increasing  
• Large commitment of capital necessary  
• Network alignment needed |

#### Rapid Growth of CINs Year Over Year¹

1) Valence Health Study 2016
Clinical Integrated Network:
A Collaboration Among Physicians and Hospitals to Improve Quality & Reduce Costs

Flexible structure positioned for success in Population Health Management

Value-based Programs & Contracts:
- Commercial Payor
- Direct-to-Employer
- MSSP & MA
- Medicaid
- Risk Arrangements

Clinically Integrated Network

PHARMACY/LAB

POST-ACUTE

PRIMARY CARE

SPECIALISTS

AMBULATORY

HOSPITAL

LEE HEALTH
Caring People, Inspiring Health
The CIN’s Foundation Allows for Efficient Regional Expansion

Regional Clinically Integrated Network that overlays the footprint of the PSN Medicaid Network:

- Clinical Alignment with physicians for Commercial programs and Direct to Employers
Transition from a Local PHO to a Regional CIN Network

Current State
- Messenger Model PHO
- Primary Care focused
- Lee County providers
- Single level membership
- Limited staffing

Future State
- Single signature CIN
- Aligned PCP & Specialty
- Region 8 providers
- Multi-level membership
- Robust staffing
Lee Health
Insurance/Network Contracting Initiatives

- BOARD OF DIRECTORS
  - LEE HEALTH
    - BOARD OF MANAGERS
      - BEST CARE COLLABORATIVE, LLC
        - Medicare Accountable Care Organization
    - BOARD OF DIRECTORS
      - BEST CARE PARTNERS, INC.
        - FL NP Corp
          - HMO License
    - BOARD OF MANAGERS
      - BEST CARE ASSURANCE, LLC
        - Medicaid Provider Service Network

- Operating Board
  - Medicare Advantage Plan
- Operating Board
  - Clinically Integrated Network
Clinical Integration Timeline

December
   Work began with the formation of an advisory panel
March
   Advisory panel meeting, workgroups were chartered
April
   Workgroups convened
May
   Advisory group/workgroup combined meeting
   Presentation to PHO Operating Committee
### CIN Provider Alignment

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<thead>
<tr>
<th>Number</th>
<th>Payer Description</th>
<th>Product Name</th>
<th>Partner</th>
<th>Affiliate</th>
<th>Member</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Commercial Direct to Employer</td>
<td>Innovatus Health</td>
<td>3 of 3*</td>
<td>2 of 3</td>
<td>1 of 3</td>
</tr>
<tr>
<td>2</td>
<td>Commercial Shared Savings</td>
<td>Innovatus Health</td>
<td>3 of 3*</td>
<td>2 of 3</td>
<td>1 of 3</td>
</tr>
<tr>
<td>3</td>
<td>Medicare Advantage Shared Savings</td>
<td>Innovatus Health</td>
<td>3 of 3*</td>
<td>2 of 3</td>
<td>1 of 3</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Number</th>
<th>Payer Description</th>
<th>Product Name</th>
<th>Partner</th>
<th>Affiliate</th>
<th>Member</th>
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</thead>
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<tr>
<td>1</td>
<td>Medicaid Provider Service Network</td>
<td>Vivida</td>
<td>2 of 3*</td>
<td>1 of 3</td>
<td>Not Required</td>
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<tr>
<td>2</td>
<td>Medicare NextGen ACO</td>
<td>Best Care Collaborative</td>
<td>2 of 3*</td>
<td>1 of 3</td>
<td>Not Required</td>
</tr>
<tr>
<td>3</td>
<td>Medicare Advantage</td>
<td>Clarion</td>
<td>2 of 3*</td>
<td>1 of 3</td>
<td>Not Required</td>
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<tr>
<td>CIN ELIGIBLE BENEFIT GRID BASED ON LEVELS OF PARTICIPATION</td>
<td>PARTNER</td>
<td>AFFILIATE</td>
<td>MEMBER</td>
<td></td>
<td></td>
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<td>-----------------------------------------------------------</td>
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<tr>
<td>Risk Coding Automation in your EMR**</td>
<td>Yes</td>
<td></td>
<td></td>
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<tr>
<td>Risk coding support/training in office**</td>
<td>Yes</td>
<td></td>
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<tr>
<td>Care Management - Automated care notes from care advisors supporting your ACO patients**</td>
<td>Yes</td>
<td></td>
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<tr>
<td>Lab feed – Improved Risk Stratification**</td>
<td>Yes</td>
<td></td>
<td></td>
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<tr>
<td>CCD Feed – Historical load of claims data to improve Risk Stratification**</td>
<td>Yes</td>
<td></td>
<td></td>
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<tr>
<td>Care Gap Integration – Claims Based care gap identification**</td>
<td>Yes</td>
<td></td>
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<tr>
<td>Behavioral Health Integration**</td>
<td>Yes</td>
<td></td>
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<tr>
<td>Waive MACRA/MIPS reporting**</td>
<td>Yes</td>
<td></td>
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<tr>
<td>Access to shared savings distribution</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
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<td>Risk coding and documentation support</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>Access to utilize Digital Cognitive Behavioral therapy</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>Clinical integration with office EMRs</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
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<tr>
<td>Access to Healthy Planet workflows, reports, etc.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
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<tr>
<td>Care manager and social worker support</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td></td>
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<tr>
<td>Increase commercial patient lives</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td></td>
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<tr>
<td>Tele-health access for your patients</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Participation in bundles</td>
<td>Yes</td>
<td>Yes</td>
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## CIN Leadership Grid

<table>
<thead>
<tr>
<th>BOARD AND COMMITTEE BENEFITS</th>
<th>PARTNER</th>
<th>AFFILIATE</th>
<th>MEMBER</th>
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<tbody>
<tr>
<td>CIN Board Membership</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>CIN Board Chairmanship</td>
<td>Yes</td>
<td></td>
<td></td>
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<tr>
<td>CIN Board Vice-Chairmanship</td>
<td>Yes</td>
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<tr>
<td>CIN Committee</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>CIN Committee Chairmanship</td>
<td>Yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CIN Committee Vice-Chairmanship</td>
<td>Yes</td>
<td></td>
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</tbody>
</table>
Physicians and Patients are the Beneficiaries of a CIN

• Reductions in administrative burden:
  o Reduction in referral burden
  o Electronic access to med records
  o Aggregate metrics and performance reporting
• Access to and/or participation in “shared savings” and other contracts with payers-One interface
• Better alignment between primary care and specialists- Quality Goals, Compensation = Network integrity
• Marketplace recognition for quality care and excellent patient experience
• Support for chronic condition registries and Quality improvement (QI) initiatives
  o Care Management
  o Predictive Analytics
  o EMR Integration
• Management/HIT expertise from Lee Health system
Lee Health Will Also Receive Benefits from a CIN

• Creates Business Partnership with Key Physicians Groups
• Focuses Physicians on Coordinated Care
  ○ Patient Safety
  ○ Controlling Costs
• Creates Alignment
• Physicians Drive Clinical Outcomes
• Positions for Health Care Reform
  ○ CIN
  ○ Bundles Consideration
  ○ Readmission Avoidance
  ○ Migration to Risk Acceptance?
Clinical Integration Timeline

June
- Communication of change to PHO members
- Town hall meetings – lunchtime and evenings
- Notification to payers of reassignment of contracts

August
- Sun-setting of PHO

September
- Implementation of Innovatus Health Network
Thank You
DATE: May 30, 2019

LEGAL SERVICE REVIEW? YES X  NO__

SUBJECT: Medicare Next Generation Accountable Care Organization

REQUESTOR & TITLE: John Chomeau, Chief Population Health Officer

PREVIOUS BOARD ACTION ON THIS ITEM (IF ANY)

On April 13, 2017, the Board approved the creation of a limited liability company (called “Best Care Collaborative, LLC”) to hold the Next Gen ACO Program agreement with the Centers for Medicare and Medicaid Services (“CMS”).

On April 27, 2017, the Board approved the Operating Agreement for Best Care Collaborative to hold the Next Gen ACO Program agreement with CMS.

On February 22, 2018, the Board approved Administration’s recommendation that Best Care Collaborative, LLC continue to operate under the 2018 CMS agreement and fully participate in the Next Gen ACO Program as presented.

SPECIFIC PROPOSED MOTIONS:

- Approve Administration’s recommended amendments to the Best Care Collaborative Operating Agreement to 1) increase the size of the BCC Board of Managers; 2) Add a requirement that certain items be approved by a majority of Class A and Class B Managers; 3) Adding the Compliance Committee as a required committee of the BCC, and 4) correct certain technical errors in the prior version of the Operating Agreement.

FINANCIAL IMPLICATIONS

Budgeted Account X Non-Budgeted _____

The expenses for participation in the Next Gen ACO Program have been budgeted, and Administration does not anticipate any additional expenses from the proposed amendments to the Operating Agreement.

STAFFING & OPERATIONAL IMPLICATIONS

The proposed motion will enable Lee Health to continue to promote both (1) the efficient delivery of value-based care in the community, and (2) the health and wellbeing of the local Medicare population.

PURPOSE/REASON FOR RECOMMENDATION

Continued support of the Next Gen ACO Program will align Lee Health with the nationwide movement towards value-based care and should result in better health outcomes for Medicare members.

SUMMARY

- Lee Health has devoted substantial time and resources to developing the Next Gen ACO Program managed by Best Care Collaborative, LLC.
- Lee Health believes that the proposed amendments to the Operating Agreement will aid in the Next Gen ACO Program’s success.
Summary of Proposed Substantive Changes

Best Care Collaborative, LLC

Section 6.3

(a) The Management Board shall consist of sixteen (16) to twenty-one (21) Managers (each a "Manager"). The Member shall be responsible for appointment of the initial Managers. The initial Managers are identified on Exhibit A. Thereafter, Managers shall be elected to the Management Board by majority vote of the then existing Managers from a slate of nominees selected by the Governance Committee and approved by the Member. Elections of new individuals to the Management Board shall be filled by the same Class of Manager as held by the former Manager or in an open Class of Manager. Each Manager shall serve for a term of 3 years and meet the Manager Selection Criteria set forth in Exhibit A. No Manager (except the President/CEO of the Member) shall serve for more than 3 consecutive terms. The Management Board shall consist of the following classes of Managers:

(i) Class A Managers. There shall be three (3) Class A Managers. Class A Managers shall consist of persons who are employed by the Member or an Affiliate of the Member or who are business and community leaders. The President/CEO of the Member shall serve as one of the Class A Managers and shall not be subject to any term limits;

(ii) Class B Managers. There shall be twelve (12) to sixteen (16) Class B Managers. Eight (8) of the Class B Managers shall be primary care Physicians and four (4) of the Class B Managers shall be specialist Physicians. The remaining four (4) Class B Manager position may be filled by primary care or specialist Physicians. Class B Managers shall consist only of Physicians that are Participants or representatives of Participants that are participating in the NextGen (and any other CMS ACO/SSP in which the Company is participating) through the Company, and shall be nominated by the Governance Committee;

(j) The following Management Board actions shall require the approval of a majority of both the Class A Managers and the Class B Managers:

(i) Any proposal to submit to the Member changes to the composition of the Management Board; and,

(ii) Any changes to the Management Board nomination process;

(iii) Incurrence of indebtedness;
Any guarantee of debt;

Distribution of any shared savings;

Allocation of any shared losses; and,

Annual budget and any non-budgeted expenditures.

Section 8.8 Compliance Committee. The Compliance Committee shall promote, support and oversee the Company's compliance responsibilities.
Summary of Proposed Substantive Changes

Best Care Assurance, LLC

Section 6.3(a)

(a) The Management Board shall consist of sixteen (16) to twenty-one (21) Managers (each a “Manager”). The Member shall be responsible for appointment of the initial Managers. The initial Managers and their initial terms are identified on Exhibit A. Thereafter, Managers shall be elected to the Management Board by majority vote of the then existing Managers from a slate of nominees selected by the Governance Committee and approved by the Member. Elections of new individuals to the Management Board shall be filled by the same Class of Manager as held by the former Manager or in an open Class of Manager. Each Manager shall serve for a term of 3 years and meet the Manager Selection Criteria set forth in Exhibit A. The Management Board shall consist of the following classes of Managers:

(i) **Class A Managers.** There shall be four six (46) Class A Managers. Class A Managers shall consist of persons who are employed by the Member or an Affiliate of the Member. Class A Managers are appointed by the Member shall not be subject to any term limits Class A Managers shall consist of individuals with any expertise that would be of assistance to the Company, and shall be nominated by the Governance Committee and,

(ii) **Class B Managers.** There shall be twelve (120) to fifteen (15) Class B Managers. Class B Managers shall consist of persons who are physicians or healthcare providers or designees of healthcare providers and shall be nominated by the Governance Committee.

(d) A quorum of the Management Board shall be established at a meeting held for any purpose only if a majority of Class A members are present Managers are present and a majority of Class B Managers are present.

(f) The following Management Board actions shall require the approval of a majority of both the Class A Managers and the Class B Managers:

(i) Any proposal to submit to the Member changes to the composition of the Management Board;

(ii) Any changes to the Management Board nomination process;

(iii) Incurrence of indebtedness;
(iv) Any guarantee of debt;
(v) Payment methodologies; and,
(vi) Annual budget and any non-budgeted expenditures.
OPERATING AGREEMENT OF

BEST CARE COLLABORATIVE, LLC
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OPERATING AGREEMENT OF
BEST CARE COLLABORATIVE, LLC

This Operating Agreement (this "Agreement") of Best Care Collaborative, L.L.C, a Florida limited liability company (the "Company"), is made and effective as of the ___ day of April, 2019, by Lee Memorial Health System ("LMHS"), a special purpose district created by special act of the Florida Legislature ("LMHS" or the "Member")

ARTICLE I
DEFINITIONS

Section 1.1 Definitions. Terms not otherwise defined in this Agreement shall have the following meanings:

"ACO" shall mean an accountable care organization, as envisioned by the Patient Protection and Affordable Care Act, and defined in the MSSP or other regulations, or in the applicable participation agreement the Company may have with CMS or CMMI.

"ACO Providers/Suppliers" shall have the meaning set forth in the applicable regulations, or in the applicable participation agreement the Company may have with CMS or CMMI, as amended from time to time.

"ACO/SSP" shall mean NextGen and all such other Medicare shared savings programs in which the Company may elect to participate.

"Act" shall mean the Florida Revised Limited Liability Act, Florida Statutes Chapter 605, as amended from time to time.

"Affiliate" shall mean any entity in which LMHS (as hereinafter defined) is the sole member or shareholder.

"CMS" shall mean the Centers for Medicare and Medicaid Services.

"CMMI" shall mean the Center for Medicare and Medicaid Innovation.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"MSSP" shall mean the Medicare Shared Savings Program.

"NextGen" shall mean the Next Generation ACO Model as that program is described in the applicable Request for Application published by CMS or CMMI, and in the applicable participation agreement between the Company and CMS.

"Participant" shall mean an individual or group of ACO Providers/Suppliers that participate in an ACO/SSP through an agreement with the Company.
"Physician" shall mean a medical doctor, doctor of osteopathy, or podiatrist who is licensed to practice in the State of Florida and who agrees to participate in an ACO/SSP through the Company via execution of a participating provider agreement with the Company.

"Treasury Regulations" shall mean the Treasury Regulations promulgated under the Code, as from time to time in effect.

ARTICLE II
ORGANIZATION

Section 2.1 Name. The name of the limited liability company is the Best Care Collaborative, LLC.

Section 2.2 Organization. The Company has been organized as a single member Florida limited liability company under and pursuant to the Act through the filing with the Secretary of State of the State of Florida Articles of Organization. The Member shall take any other actions as may be necessary for continuation of the Company as a limited liability company under the provisions of the Act and the terms of this Agreement.

Section 2.3 Background and Purpose. The purpose of the Company shall be to:

(a) Function and operate as an ACO and participate in the ACO/SSPs approved by the Company;

(b) Improve the health of patients and populations served by the Company and served by the Member, members of the Member's medical staff, and physicians and other health care providers in the community served by the Member; reduce total healthcare costs; eliminate unnecessary clinical variation; monitor the health care services provided through and arranged by the Company; integrate the provision of care provided by providers contracted through the Company; contract with government and private health benefit plans on behalf the providers contracted with the Company; increase the quality of health care services provided by providers contracted with the Company; improve the patient experience for patients receiving services from providers contracted with the Company;

(c) Become accountable for the quality, cost and overall care of patients and beneficiaries assigned or attributed to Participants; promote evidence-based medicine, patient engagement and the coordination of patient care;

(d) Receive and distribute shared savings; repay shared losses or other monies determined to be owed to CMS or other payor; establish, report and ensure Participant compliance with health care quality criteria, including quality performance standards, and fulfilling other ACO functions identified in the applicable participation agreement the Company may have with CMS, CMMI or other payor;
(e) Conduct activities, to the extent consistent with and not contrary to any applicable ACO/SSP regulations, and that are consistent with the charitable and educational purposes of the Member within the meaning of Section 501(c)(3) of the Code; and,

(f) Engage in any or all other lawful activities related to ACO/SSPs for which limited liability companies may be organized under the Act and which the Member and/or Management Board may deem to be in the best interests of the Company, and to do all other things deemed by the Member and/or Management Board to be necessary or desirable in connection with such activities.

**Section 2.4 Restriction on Activities.** The Company shall not:

(a) Carry on any activities not permitted to be carried on by a company exempt from Federal income tax under Section 501(c)(3) of the Code or by a company that contributions to which are deductible under Section 170(c)(2) of the Code; and,

(b) Authorize nor create nor support any affiliate or subsidiary of the Company.

**Section 2.5 No Private Benefit.** Except as provided with respect to distribution of shared savings earned pursuant to participation in an ACO/SSP or reasonable compensation paid for services rendered to or for the Company affecting one or more of its purposes,

(a) No part of the net earnings of the Company shall inure to the benefit of, or be distributable to Directors, officers, or other private persons; and,

(b) No Manager or Officer of the Company, or any person shall be entitled to share in the distribution of any of the Company assets on dissolution of the Company.

**Section 2.6 No State Law Partnership.** The Member and the Company intend that the Company not be a partnership (including a limited partnership) or joint venture and this Agreement may not be construed to suggest otherwise. The Member intends that, until an election is otherwise made pursuant to Section 301.7701-3(c) of the Treasury Regulations, the Company be taxed as a disregarded entity for federal income tax purposes.

**Section 2.7 Permissible Relationships.** The Member understands that the Company's operations are subject to various state and federal laws regulating permissible relationships between the Member and entities such as the Company, including 42 U.S.C. § 1320a-7b(b) (the "Anti-Kickback Statute" or "Fraud and Abuse Statute"), and 42 U.S.C. § 1395nn (the "Stark Act"). It is the intent of the parties that the Company operate in a manner consistent with the foregoing statutes.

**Section 2.8 Title to Company Assets.** Title to Company assets, whether real, personal or mixed and whether corporeal or incorporeal, shall be deemed to be owned by the Company as an entity and not the Member. Title to any or all of the Company assets may be held in the name of the Company or one or more of its affiliates or one or more nominees, as the Management Board may determine. All Company assets shall be recorded as the property of the Company in its books and records, irrespective of the name in which record title to such Company assets is held.
Section 2.9 Registered Office and Registered Agent. The Company's registered office and registered agent shall be the registered office and agent named in the Articles of Organization or such other office or agent as the Management Board may designate from time to time in the manner provided by the Act.

Section 2.10 Other Offices. The Company may also have offices at such other places as the Management Board may from time to time determine or the business of the Company may require.

Section 2.11 Term. The term of the Company shall be perpetual unless sooner dissolved in accordance with this Agreement or pursuant to the Act.

ARTICLE III
MEMBER OF THE COMPANY

Section 3.1 Member; Action by Member. The sole Member of the Company is LMHS, special purpose district created by special act of the Florida Legislature. Any action permitted or required to be taken pursuant to this Agreement by the Member may be taken on behalf of the Member by its President and Chief Executive Officer or by any other officer authorized by the board of directors of the Member.

Section 3.2 Member Reserved Powers. In addition to any other actions for which approval by the Member is required by this Agreement, the Member's approval shall be required to authorize any of the following matters, and the Management Board shall not take any of the actions below absent such Member approval:

(a) Amendments to the Company's Articles of Organization or this Agreement;
(b) Change of the control of the Company or merger, consolidation or dissolution of the Company;
(c) Sale, lease or mortgage of all or substantially all of Company's assets;
(d) Approval of a guarantee by Company of debts of others in excess of limits approved by the Member;
(e) Incurrence of non-budgeted expenditures and incurrence of indebtedness above limits approved by the Member from time to time;
(f) With the approval of the Management Board, removal of a Manager;
(g) Admittance, and terms thereof, including capital contributions, for the addition of new members to the Company; and,
(h) Any action or plan of the Company that the Member, in its sole discretion, believes may impose significant risk to the tax-exempt status, licensure, or accreditation of the Member or any facility operated by the Member, or which may impose significant legal, regulatory, or financial risk to the Company, the Member or any facility operated by any of the foregoing.
Section 3.3 Limitation of Liability. The Member shall not be liable under a judgment, decree or order of the court, or in any other manner, for a debt, obligation or liability of the Company.

ARTICLE IV
CAPITAL CONTRIBUTIONS

Section 4.1 Initial Funding Requirements. LMHS agrees to make an initial capital contribution in an amount satisfactory for the Company to perform its purposes.

Section 4.2 Future Capital Requirements. The Member shall not be obligated to make any capital contributions or loans to the Company (except as provided in Section 4.1 relating to Initial Funding Requirements), or otherwise supply or make available any funds to the Company, even if the failure to do so would result in a default of any of the Company's obligations or the loss or termination of all or any part of the Company's assets or business.

Section 4.3 Loans. In the event that the Company requires additional funds to carry out its purposes, to conduct its business, or to meet its obligations, the Company may borrow funds from such lender(s), including the Member, on such terms and conditions as are approved by the Board of Managers, all on such terms as reflect fair market value. It is specifically provided that no such terms or conditions shall impose any personal liability on any Member without the prior written consent of such Member. No Member shall be entitled, obligated or required to make any loan to or guarantee a loan for the Company or make any Capital Contribution to the Company. No loan made to the Company by any Member shall constitute a Capital Contribution to the Company for any purpose.

Section 4.4 Third Party Liabilities. The provisions of this Article are not intended to be for the benefit of any creditor or other person (other than a Member in its, his or her capacity as a Member) to whom any debts, liabilities or obligations are owed by (or who otherwise has any claim against) the Company or any Member. Moreover, notwithstanding anything contained in this Agreement, including specifically but without limitation this Article, no such creditor or other person shall obtain any rights under this Agreement or shall, by reason of this Agreement, make any claim in respect of any debt, liability or obligation (or otherwise) against the Company or any Member.

Section 4.5 No Withdrawal of or Interest on Capital. Except as otherwise provided in this Agreement, (i) the Member shall not have any right to demand and receive property of the Company in exchange for all or any portion of its, his or her Capital Contribution, and (ii) no interest or preferred return shall accrue or be paid on any Capital Contribution.

Section 4.6 Liability of Member for Capital. No Member shall have any liability to restore any negative balance or to contribute to, or in respect of, the liabilities or the obligations of the Company, or to restore any amounts distributed from the Company, except as may be required specifically under this Agreement, the Act or other applicable law. No Member shall be personally liable for any liabilities or obligations of the Company or any of its Member, unless agreed to by the Member.
ARTICLE V
DISTRIBUTIONS

Section 5.1 Distribution of Company Funds - In General. Except as necessary to comply with the Sections of this Article V, all Net Operating Cash Flow of the Company over and above Reasonable Reserves shall be distributed at least annually to the Member.

Section 5.2 Distribution Upon Dissolution. Amounts or assets available upon dissolution, and after payment of, or adequate provision for, the debts and obligations of the Company, shall be distributed and applied in the following priority:

(a) First, to fund reserves for liabilities not then due and owing and for contingent liabilities to the extent deemed reasonable by approval of the Management Board, provided that, upon the expiration of such period of time as the Management Board, acting by approval, shall deem advisable, the balance of such reserves remaining after payment of such contingencies shall be distributed in the manner hereinafter set forth in this Section; and,

(b) Second, to the Member.

Section 5.3 Distribution of Assets in Kind. No Member shall have the right to require any distribution of any assets of the Company in kind.

Section 5.4 Distributions in Compliance with the Law. All distributions shall be in compliance with all state and federal laws for not for profit entities, including, but not limited to IRS Bulletin 2014-46.

ARTICLE VI
MANAGEMENT

Section 6.1 Management of the Company's Affairs. Subject to the powers reserved to the Member set forth in Section 3.2, the property, funds, affairs and business of the Company shall be managed solely by its Board of Managers (the "Management Board"), which shall constitute the "manager" of the Company within the meaning of the Act and which shall serve as the governing body of the Company. The Management Board shall have and is vested with the full power and authority of the Company, except as may be expressly limited by law, the Articles of Organization or this Agreement. The Management Board shall have the power to act as agent of the Company to do or cause to be done by delegation to the Officers or others any and all lawful and ethical things for and on behalf of the Company. Without limiting the foregoing, the powers of the Management Board shall include, but not be limited to:

(a) The sole and exclusive authority to execute the functions of the Company's participation in any ACO/SSP program as an ACO, and to make final decisions on behalf of such ACO;

(b) Responsibility for the oversight and strategic direction of the Company;
(c) Determining the criteria for credentialing of participating Physicians and Participants (as applicable);

(d) Overseeing the Company's management and holding the management and Officers accountable for clinical integration, quality and utilization activities;

(e) Review and approval of Company processes, policies and protocols, including care management protocols, data sharing and reporting processes and quality of care protocols;

(f) Review and approval of contracting arrangements for the provision of healthcare and/or care management services between the Company and third-party payors;

(g) Assessing dues, assessments and service fees, if any, on participating Physicians;

(h) Conducting, directly or through designated agents, peer and utilization review of services provided by participating Physicians;

(i) Developing, implementing and overseeing the strategic plan, operating budget, patient-centered objectives, the annual financial plan and information system plans for the Company;

(j) Establishing quality of care and reporting standards; negotiating and entering into payor arrangements;

(k) Determining risk-sharing arrangements among participating Physicians and ACO Providers/Suppliers, and establishing methods and procedures for the distribution of shared savings and losses generated via participation in the applicable ACO/SSP;

(l) Directing and overseeing the activities and duties of the Officers, senior leadership and employees of the Company;

(m) Establishing and enforcing compliance procedures by such means and corrective actions as the Management Board may prescribe; and,

(n) The power to adopt, amend, and enforce rules and regulations for the conduct of the affairs of the Company.

In exercising its responsibilities hereunder the Management Board shall (i) have and maintain a transparent governing process; (ii) diligently and faithfully devote as much of their time to the business of the Company as may be reasonably necessary to properly conduct the affairs of the Company; however, the individual Managers shall not be required to devote their full time to such duties; and (iii) fulfill their duty of loyalty to the Company to conduct the affairs of the Company in the best interests of the Company, including the safekeeping and use of all funds and assets, whether or not in its immediate possession and control, and the Management Board shall not employ or permit others besides the Management Board to employ such funds or assets in any manner except for the benefit of the Company and/or the Member.
Section 6.2 Foreign Qualification. Before the Company transacts business in any jurisdiction other than Florida in a manner that would require the Company to qualify or register to do business in the jurisdiction, the Management Board shall, to the extent procedures are available and those matters are reasonably within the control of the Management Board, take all necessary actions to qualify the Company as a foreign limited liability company authorized to transact business in the jurisdiction. Each Member shall execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with this Agreement requested by the Management Board that are necessary or appropriate to qualify, continue, and terminate the Company as a foreign limited liability company authorized to transact business in all jurisdictions in which such authorization is required.

Section 6.3 Number and Composition.

(a) The Management Board shall consist of sixteen (16) to twenty-one (21) Managers (each a "Manager"). The Member shall be responsible for appointment of the initial Managers. The initial Managers are identified on Exhibit A. Thereafter, Managers shall be elected to the Management Board by majority vote of the then existing Managers from a slate of nominees selected by the Governance Committee and approved by the Member. Elections of new individuals to the Management Board shall be filled by the same Class of Manager as held by the former Manager or in an open Class of Manager. Each Manager shall serve for a term of 3 years and meet the Manager Selection Criteria set forth in Exhibit A. No Manager (except the President/CEO of the Member) shall serve for more than 3 consecutive terms. The Management Board shall consist of the following classes of Managers:

(i) **Class A Managers.** There shall be three (3) Class A Managers. Class A Managers shall consist of persons who are employed by the Member or an Affiliate of the Member. Class A Managers are appointed by the Member shall not be subject to any term limits;

(ii) **Class B Managers.** There shall be twelve (12) to sixteen (16) Class B Managers. Eight (8) of the Class B Managers shall be primary care Physicians and four (4) of the Class B Managers shall be specialist Physicians. The remaining four (4) Class B Manager position may be filled by primary care or specialist Physicians. Class B Managers shall consist only of Physicians that are Participants or representatives of Participants that are participating in the NextGen (or any other CMS ACO/SSP in which the Company is participating) through the Company, and shall be nominated by the Governance Committee;

(iii) **Class C Manager(s).** The Company shall have one (1) or two (2) Class C Managers. One Manager shall be a Medicare beneficiary who is then currently assigned or attributed to a Physician who is participating in NextGen (or other CMS ACO/SSP in which the Company is participating) through the Company. The Company shall also have one (1) Class C Manager who shall be an individual who has training or professional experience in advocating for the rights of consumers (a consumer advocate).
Only one (1) Class C Manager is required if the same individual is both a consumer advocate and a qualifying Medicare beneficiary; and,

(iv) **Ex Officio Managers.** The Management Board shall also include those persons who are deemed by the Management Board to be capable of providing valuable insight and guidance to the business of the Company based upon the person's experience and skill level. The *Ex Officio* Managers shall be selected by the Governance Committee, be approved by the Member and the Management Board and shall not be entitled to vote and may not be counted in determining a quorum of the Management Board.

(b) To qualify for election as a Class C Manager, the Medicare beneficiary and the consumer advocate must be an individual(s): (i) who does not have a conflict of interest with the Company; (ii) who has no immediate family member with a conflict of interest with the Company; (iii) who is not a NextGen Participant or preferred provider; and (iv) who does not have a direct or indirect financial relationship with the Company, a NextGen Participant, or a preferred provider, except that such person may be reasonably compensated by the Company for his or her duties as a member of the Management Board. In cases where beneficiary and/or consumer advocate representation on the Management Board is prohibited by state law, the Company, with CMS approval, shall provide for an alternative mechanism to ensure that its policies and procedures reflect consumer and patient perspectives.

(c) At all times, at least seventy-five percent (75%) of the Managers shall be Physicians that are Participants or representatives of Participants that are participating in the NextGen (and any other CMS ACO/SSP in which the Company is participating) through the Company. The required Medicare beneficiary and consumer advocate representation on the Management Board will not be included in either the numerator or the denominator when calculating the percent control.

(d) Class B Managers must meet and maintain all credentialing criteria established by the Company and by written agreement have agreed to participate in NextGen (or other CMS ACO/SSP) through the Company or be a physician designee of a Participant.

(e) No Manager may at any time be an individual who is: (i) a Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) supplier; (ii) an ambulance supplier; (iii) a drug or device manufacturer; or (iv) excluded or otherwise prohibited from participation in Medicare or Medicaid; or an officer, director, member, owner or representative of: (i) a Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) supplier; (ii) an ambulance supplier; (iii) a drug or device manufacturer; or (iv) excluded or otherwise prohibited from participation in Medicare or Medicaid.
(f) The Managers may serve in similar or complimentary roles or positions for Participants, ACO Providers/Suppliers, or preferred providers to the roles or positions in which they serve for the Company.

(g) The Management Board may, from time to time, establish committees of the Management Board. Such committees shall report to the Management Board, and the Management Board shall make any final decisions binding upon the Company. The Management Board shall, at a minimum, have the following standing committees:

(i) Executive Committee (To be established at the Management Board's discretion);

(ii) Governance Committee;

(iii) Quality and Data Committee;

(iv) Contracting Committee; and,

(v) Credentialing and Standards Committee.

(h) A quorum of the Management Board shall be established at a meeting held for any purpose only if a majority of Managers of Class A Managers are present and a majority of Class B Managers are present.

(i) The approval of a majority of the Managers present at any meeting at which a quorum is present shall be the acts of the Management Board, except as otherwise required by this Agreement. As a general rule, all matters discussed and considered by the Management Board shall be discussed in a forum in which all Managers who are present can participate.

(j) The following Management Board actions shall require the approval of a majority of both the Class A Managers and the Class B Managers:

(i) Any proposal to submit to the Member changes to the composition of the Management Board;

(ii) Any changes to the Management Board nomination process;

(iii) Incurrence of indebtedness;

(iv) Any guarantee of debt;

(v) Distribution of any shared savings;

(vi) Allocation of any shared losses; and,

(vii) Annual budget and any non-budgeted expenditures.
A Manager may resign at any time by tendering his or her resignation in writing to the Chair of the Management Board. A Manager's resignation shall be effective upon receipt by the Chair of the Management Board. Except as otherwise determined by the Management Board, resignation of a Manager shall constitute resignation as a member of each Committee of the Management Board on which such person sits. Additionally, and consistent with Section 3.2 above, any Manager may be removed, with or without cause, by a majority vote of the Management Board with approval of the Member.

If a position on the Management Board held by any Manager becomes vacant for any reason such vacancy will be filled (by a nominee from the Governance Committee) by election of the Management Board and subject to the approval of the Member. The replacement Manager must satisfy all the qualifications applicable to the vacating Manager and the Class of Managers to which the vacating Manager belonged. The replacement Manager shall be assigned to the same Class as the vacating Manager, and his or her initial term shall be the unexpired term of the vacating Manager.

Section 6.4 Manner of Exercise of Board's Authority. All responsibilities granted to the Management Board or under this Agreement shall be exercised by the Management Board as a body, and no Manager, acting alone and without prior approval of the Board, shall have the authority to act on behalf of the Management. Except as provided in Section 6.5, the Company shall act by vote of a majority of the Managers at a meeting where a quorum, as defined in Section 6.3(h), is present. None of the following actions shall be taken by the Company except upon approval of the Board of Managers, subject to the requirements of Section 6.5 hereof:

(a) Borrow money and otherwise obtain credit and other financial accommodations not in excess of $250,000 in the ordinary course of the business of the Company;

(b) Employ, engage, retain or deal with any persons to act as employees, agents, brokers, accountants, lawyers or in such other capacity as may be necessary or desirable;

(c) Adjust, compromise, settle or refer to arbitration any claim in favor of or against the Company or any of its assets, to make elections in connection with the preparation of any federal, state and local tax returns of the Company and to institute, prosecute, and defend any legal action or any arbitration proceeding;

(d) Acquire and enter into any contract of insurance necessary or proper for the protection of the Company and/or any Member and/or any Manager, including without limitation to provide the indemnity described in Section 7.8 or any portion thereof;

(e) Approve technical amendments to this Agreement or the Articles of Organization;

(f) Establish a record date for any distribution to be made under Article VI hereof; and,
(g) Perform any other act which the Managers may deem necessary or desirable for the Company as well as the Company's business.

Section 6.5 Supermajority Approval. The following actions shall require the approval of a majority of both the Class A Managers and the Class B Managers:

(a) Any proposal to submit to the Member changes to the composition of the Management Board;

(b) Any changes to the Management Board nomination process;

(c) Amendments to this Agreement other than technical;

(d) The designation of some or all of the Net Operating Cash Flow as Reasonable Reserves;

(e) Removal of a Manager;

(f) Adoption of payment risk models for any managed care contract to which the Company is a party;

(g) Expenditures not part of the approved operating or capital budgets, including any contingency amounts;

(h) Approval of a contract with a health plan or other payer with which the Company has no contract, or the termination of an existing contract with a health plan or payer;

(i) Contracting with a provider of health care services who/which is not a Member;

(j) Borrowing by the Company in excess of $250,000;

(k) Additional capital contributions;

(l) Election of officers of the Company;

(m) The selection or termination of the Company's Executive Director;

(n) A bankruptcy filing by the Company; and,

(o) Authorization, creation, designation, determination or issuance of any new class of Units, or securities convertible into Units, or the issuance of options or warrants to purchase Units.

Section 6.6 Restrictions. Notwithstanding any other provision in this Agreement to the contrary, the Company shall not take any of the actions identified in Section 3.4 (Member Reserved Powers) without approval of the Member.
Section 6.7 Compensation of Managers. Managers may be reimbursed for out-of-pocket expenses incurred on behalf of the Company and reasonable compensation as determined by the Member for services rendered in their capacity as Managers.

Section 6.8 Contracts with Affiliated Persons. The Company may enter into one or more agreements, leases, contracts or other arrangements for the furnishing to or by the Company of goods, services or space with any Member, Manager or Affiliate of the Member or a Manager, and may pay compensation thereunder for such goods, services or space, provided in each case the amounts payable thereunder are reasonably comparable to those which would be payable to unaffiliated persons under similar agreements, and if the determination of such amounts is made in good faith it shall be conclusive absent manifest error.

Section 6.9 Other Activities. Subject to any other restrictions set forth in this Agreement, the Member, Managers and any Affiliates of any of them may engage in and possess interests in other business ventures and investment opportunities of every kind and description, independently or with others as long as they do not violate Article IX hereof.

Section 6.10 Annual and Regular Meetings of the Management Board. Subject to applicable law, an annual meeting of the Management Board shall be held immediately after, and at the same place as, the annual meeting of the Member. Regular meetings of the Management Board shall be held at least quarterly at such time and place as a majority of the Managers may from time to time designate.

Section 6.11 Special Meetings of the Management Board. Subject to applicable law, special meetings of the Management Board may be called at any time by the Chair of the Management Board or by majority of the Management Board. The business to be transacted at any special meeting shall be limited to those items of business set forth in the notice of the meeting. At least three (3) days (or seven (7) days, if notification is made by United States mail), prior to the date fixed for the holding of any special meeting, each Manager shall be notified of the time, place and purpose of such meeting. Upon certification to the Secretary by the Chair of the Management Board and President that a state of emergency or matter of extreme urgency in connection with the affairs of the Company exists, said notice may be given to each Manager twenty-four (24) hours prior to the meeting.

Section 6.12 Meeting Participation. Unless specifically limited or restricted by the Management Board, a member of the Management Board may participate in any meeting of the Management Board by telephone conference call or similar communications equipment, so long as all persons participating in any such meeting are be able to hear each other. Participation in a meeting pursuant to this provision shall constitute presence in person at the meeting.

Section 6.13 Notices and Mailing. All notices required to be given to Managers pursuant to this Section shall state the authority pursuant to which they are issued (e.g., "By order of the Chair"). Except as this Agreement otherwise provides, notice of the meeting need not state the purpose thereof. Every notice shall be deemed to have been given when the same has been hand delivered to the Manager at his or her last address appearing upon the records of the Company, received by trackable mail carrier service, or transmitted by electronic mail to the Manager at his or her email address appearing upon the records of the Company.
Section 6.14 Waiver of Notice. Notice of the time, place and purpose of any meeting of the Management Board may be waived by telex, telegraph, facsimile transmission, or other recognized electronic means, or in writing, by any Manager, either before or after such meeting has been held.

Section 6.15 Action by Unanimous Written Consent. Any action that may be taken at any meeting of the Management Board or any Committee thereof may be taken without a meeting if consent in writing setting forth the action is signed by all of the Managers, whether collectively or severally, and filed with the records of proceedings of the Management Board.

ARTICLE VII
OFFICERS

Section 7.1 Officers. The officers of the Company shall be a President, a Secretary, a Treasurer, a Medical Director and a Chair of the Management Board (collectively the "Officers" and each an "Officer"). The number, title, term of office, and responsibilities of other officers of the Company shall be as set forth in this Article VII or as determined by the Management Board from time to time, consistent with Florida law. The President shall be selected in accordance with Section 7.2(c), the Chair of the Management Board shall be elected by a majority vote of the Management Board, and all other Officers shall be elected or appointed as set forth herein or as determined by the Management Board from time to time based on nominations from the Governance Committee.

Section 7.2 President.

(a) Unless otherwise provided by the Management Board, the President shall serve as the Chief Executive Officer/Executive Director of the Company and shall have general and active responsibility for the supervision and management of the operations of the Company and shall ensure that all orders, policies and resolutions of the Management Board are carried out. The President shall be a Physician licensed in Florida and, in all events, be subject to the authority of the Management Board and shall work with all Committees of the Management Board. The President shall also be responsible for the selection and responsibilities of all of the Company's other management personnel.

(b) The President shall attend all meetings of the Management Board and its committees and act as a liaison between the Member and the Company.

(c) The President shall be elected by the Management Board from those candidates recommended by the Governance Committee and may be removed and replaced by the Management Board, without prejudice to any contract rights that he or she may have.

(d) Except as provided in Section 7.1 the President may appoint such other officers as the President may determine to be necessary and appropriate to the management and operation of the Company, provided that the duties and functions are in compliance with all laws, expressly including federal laws applicable to tax-exempt organizations. All officers appointed by the President shall report to the President or to another officer designated by the President, and the President may remove any
such appointed officer, with or without cause, subject to any rights that a removed officer may have under such officer's employment agreement or policy of the Company.

Section 7.3 Terms of Office. Except for the President, the Chair and each Officer shall hold office for the term of one year, or until his or her successor is elected or appointed and qualified, and may serve an unlimited number of consecutive terms.

Section 7.4 Vacancies. Any vacancy occurring in the offices of Chair of the Management Board, Secretary, Medical Director and Treasurer shall be filled by the Management Board for the unexpired term of such office. Where the vacating Officer was appointed by the President, the President may appoint a successor.

Section 7.5 Resignation or Removal of Officers. An Officer of the Company may resign, effective immediately, at any time by tendering his or her resignation in writing to the Chair. Such resignation shall be effective upon receipt. The Management Board, by majority vote and with the approval of the Member, may remove any Officer at any time, with or without cause, whenever in the judgment of the Management Board the best interests of the Company will be served thereby.

Section 7.6 Chair of the Management Board. The Chair shall be any Manager selected by the Management Board. The Chair shall have such duties and responsibilities as shall be delegated to him or her by this Agreement and by the Management Board from time to time. The Chair shall preside at all meetings of the Management Board. The Chair shall be generally responsible for establishing the meeting date of all meetings of the Management Board and shall, in conjunction with other Managers and the President, establish the agenda for each meeting. In the exercise of the Chair's responsibility to set the agenda for meetings of the full Management Board, the Chair may request that any Management Board committee review any item prior to the consideration of such matter by the full Management Board. The Chair may direct that any item under consideration by any Management Board committee be referred to the full Management Board for consideration.

Section 7.7 Secretary. The Secretary shall attend all meetings of Management Board. The Secretary shall keep or cause to be kept all of the non-financial records of the Company, shall record the minutes of the meetings of the Management Board, send out all notices of meetings, and perform such other duties as may be prescribed by the Management Board or its Chair. The Secretary shall also keep or cause to be kept a register of the names and addresses of each Manager and of the dates of expiration of their respective terms of office. The Secretary may be assisted in any of these duties by an Assistant Secretary as provided herein. The Secretary shall be elected by the Management Board.

Section 7.8 Treasurer. The Treasurer shall have charge of and be responsible for all funds, securities, receipts and disbursements of the Company, and shall report to, and shall perform such duties as may be assigned by, the President or another officer designated by the President. If required by the President, the Treasurer shall give a bond for the faithful discharge of his duties, with such surety or sureties as the President may determine. The Treasurer shall be elected by majority vote of the Management Board.
Section 7.9 Medical Director. The Medical Director shall be responsible for the supervision, oversight and control over all of the clinical affairs of the Company, including, but not limited to, the development, adoption, implementation and application of clinical protocols, processes and pathways and evidence-based medical interventions. The Medical Director shall perform those duties and have those responsibilities as may be assigned by the Management Board or the President, and shall report to the Management Board. The Medical Director shall be a board-certified Physician that is participating in NextGen (or other CMS ACO/SSP in which the Company is participating), licensed to practice medicine in the State of Florida, and regularly present at an office, clinic or other location participating in the Company ACO. The Medical Director shall be elected by, and serves at the pleasure of, the Management Board.

Section 7.10 Other Officers. The Management Board, upon the recommendation of the Officers of the Company, may appoint a Vice Chair, one or more Vice Presidents and Executive Vice Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers, and such other officers having such duties and responsibilities as the Management Board deems advisable.

Section 7.11 Compensation. The compensation of the Officers, if any, shall be fixed from time to time by the Management Board, and no Officer shall be prevented from receiving such compensation by reason of the fact that such officer is also a Manager or Member of the Company. Nothing herein shall require that any Officer be compensated.

ARTICLE VIII
COMMITTEES OF THE BOARD

Section 8.1 Management Board Committees. The Management Board shall, at a minimum, establish and organize the committees to the extent provided in Section 8.2. The Management Board may establish and organize such other committees in such manner as it deems appropriate from time to time (collectively with the standing committees the "Committees" and each a "Committee"). The charge of all committees will be as determined by the Management Board from time to time. Committees will include representation of applicable clinical specialties and subspecialties, where appropriate and each committee must include at least one individual who is a Manager. Each Committee provided for in this Article VIII or hereafter established shall have the members, powers, and authority, and be subject to such other terms and conditions as provided in this Article VIII or as provided in the resolution establishing such Committee, as the case may be.

Section 8.2 Appointment of Committee Members. Except as otherwise provided in this Article VIII, the members and the chairs of the Committees provided for in this Article VIII shall be appointed by vote of the Management Board. Committee members need not be a member of the Management Board, provided that each Committee shall have one member who is a Manager, and provided further that the Medical Director shall be a member of the Quality and Data Committee. The Management Board shall, in addition, appoint the members of and chairs of such other special committees with such powers as the Management Board shall deem appropriate, after receiving nominations made by the Governance Committee.
Section 8.3 Executive Committee. The Executive Committee shall consist of such members and perform such functions as may be established by the Management Board under policies and procedures adopted from time to time by Management Board resolution.

Section 8.4 Governance Committee. The Governance Committee shall, subject to the ultimate governance responsibilities of the Management Board, be primarily responsible for the nominations of the Management Board and Committee members as provided herein:

(a) Recommending individuals for election to the Management Board;
(b) Recommending individuals for appointment as President;
(c) Recommending individuals for appointment as Officers;
(d) Recommending candidates for consideration by the Management Board for appointment to Committees;
(e) Establishing and monitoring compliance with Management Board, Committee member and Officer selection guidelines; and,
(f) Periodically reviewing the effectiveness of management governance process.

At least four (4) weeks prior to a meeting of the Management Board at which Managers, Officers or committee members will be elected, the Governance Committee shall provide to the Member, for review and approval, a slate of nominees for Manager, Officer and/or committee member positions whose terms are expiring, with one or more eligible candidates presented for each such position. In the event the Member does not approve one or more of the nominees for Manager, the Governance Committee shall remove such individual(s) from the slate of nominees, add a new nominee(s) to the slate, and resubmit the slate of nominees to the Member for review and approval. This process shall continue until all the nominees for Manager are approved by the Member. Member approval is not required for the nomination, election or appointment of officers and committee members.

Section 8.5 Quality and Data Committee. The Quality and Data Committee shall oversee the Company’s gathering and analysis of performance data and practices to set goals and take action, to identify high risk or complex patients, measure and analyze the results of performance measurement activities and oversee an annual review of the quality of care provided by the Company and the performance and patient experience. The Quality and Data Committee shall operate in accordance with the policies and procedures adopted from time to time by the Management Board. The Quality and Data Committee shall perform the following functions:

(a) Recommend clinical performance initiatives for approval by the Management Board;
(b) Assure the quality of healthcare services provided by Physicians pursuant to arrangements by and between the Company and various health plans;
(c) Develop and recommend to the Management Board for approval clinical and patient care protocols, guidelines and standards,

(d) Develop and recommend to the Management Board for approval protocols or processes which will allow for the promotion of evidence-based care, beneficiary engagement and the coordination of care;

(e) Develop and recommend to the Management Board for approval processes for reporting on quality and cost metrics;

(f) Establish criteria for clinical outcomes and patient satisfaction;

(g) Develop clinical performance measurement definitions and methodology;

(h) Develop and monitor clinical performance improvement methods and systems;

(i) Monitor clinical performance reporting;

(j) Develop and recommend clinical performance incentive plan design;

(k) Develop and recommend care management systems; and,

(l) Develop and recommend clinical data strategy.

Section 8.6 Credentials and Standards Committee. The Credentials and Standards Committee shall operate in accordance with policies and procedures adopted from time to time by the Management Board. The Credentials and Standards Committee shall perform the following functions:

(a) Recommend Physician credentialing criteria and methodology for approval by the Management Board;

(b) Review and recommend approval of provider credentials; and,

(c) Conduct provider disciplinary process and recommend disciplinary action.

Section 8.7 Operations and Contracting Committee. The Operations and Contracting Committee shall oversee the Company's contracting arrangements with payers and providers and will be responsible for facilitating adequate access to services by patient populations served by the Company. The Operations and Contracting Committee will recommend to the Management Board contracts with health plans, Physicians, practitioners and providers to provide the full continuum of care and will foster open communication and cooperation with quality improvement activities. The Operations and Contracting Committee will evaluate, design and recommend for Management Board approval the incentive-based compensation programs which are based on the performance of the Company as a whole using clinical quality, cost and satisfaction as indicators. The Operations and Contracting Committee shall oversee the Company's web-based physician and hospital directories and also assesses the cultural, ethnic, racial and linguistic needs of its patients. The Operations and Contracting Committee shall operate in accordance with the Operations and
Contracting Committee policies and procedures adopted from time to time by the Management Board. The Operations and Contracting Committee shall perform the following functions:

(a) Develop and recommend payer strategy for approval by the Management Board;
(b) Develop and recommend general contracting policy guidelines;
(c) Coordinate payer contracting and recommend contracts to Management Board for approval;
(d) Review actuarial/cost analysis;
(e) Recommend division of bundled funds;
(f) Coordination of provider subcontracting; and,
(g) Review and recommend clinical performance incentive plan awards.

Section 8.8 Compliance Committee. The Compliance Committee shall promote, support and oversee the Company's compliance responsibilities.

Section 8.9 Term of Office. Committee members shall be appointed annually at the annual meeting which shall be held in November of each year or as soon thereafter as convenient to the Management Board. Except as otherwise provided in this Agreement, each member of a Committee shall continue in office until his or her successor is appointed, unless the Committee of which he or she is a member is sooner terminated by the Management Board or until the earlier death, resignation or removal of the Committee member.

Section 8.10 Committee Meetings. Each Management Board Committee shall meet at the call of its chair, who may establish a regular meeting schedule. Except for regularly scheduled committee meetings, each committee member shall be notified of the time and place of the meeting at least two (2) days, or seven (7) days if by United States mail, and not more than thirty (30) days prior to the date fixed for the holding of any meeting, provided that notice may be waived by all of the members of the committee. Unless specifically limited or restricted by the Chair of the Management Board, any member of the Management Board Committee may participate in any meeting of such Management Board Committee by conference telephone or similar communications equipment, so long as all persons participating in any such meeting are able to hear each other. Participation in a meeting pursuant to this provision shall constitute presence in person at the meeting.

Section 8.11 Resignation or Removal of Committee Members. A member of any Committee may resign at any time by tendering his or her resignation in writing to the Chair of the Management Board. The Management Board, by a majority vote, may remove any member of any Committee, at any time, with or without cause.

Section 8.12 Notices and Mailings. All notices required to be given to Committee members pursuant to this Agreement shall state the authority pursuant to which they are issued (as, "by order
of the Chair of the Committee"). Notice of the meeting need not state the purpose thereof. Every notice shall be deemed to have been given when the same has been hand delivered to the Manager at his or her last address appearing upon the records of the Company, or transmitted by electronic mail to the Manager at his or her email address appearing upon the records of the Company.

Section 8.13 Quorum.

(a) The presence in person of a majority of the members of any Committee shall constitute a quorum for the transaction of business. Except as otherwise provided in this section, the act of a majority of the voting members of any Committee present and voting at a duly constituted meeting at which a quorum is present shall be the act of the Committee.

(b) After a quorum has been established by a Committee meeting, the subsequent withdrawal of Committee members from the meeting so as to reduce the number of Committee members present at such meeting to fewer than the number required for a quorum shall not affect the validity of any action taken by the committee members at the meeting or at any adjournment thereof. A majority of the Committee members present, whether or not a quorum exists, may adjourn any meeting of the committee to another time and place. Notice of the adjourned meeting shall be given to all Committee members.

Section 8.14 Committee Action By Unanimous Written Consent. Any action that may be taken at any meeting of any Committee may be taken without a meeting if a consent in writing setting forth the action is signed by all of the Committee members, whether collectively or severally, and filed with the records of proceedings of the Committee.

Section 8.15 Other Committees. In addition to the standing Committees identified in this Article VIII, the Management Board may create such other Committees as may be required by law, applicable regulation, or by other applicable credentialing or accreditation agencies, or otherwise, all of which committees shall report to the Management Board.

ARTICLE IX
COMPLIANCE AND CONFLICTS OF INTEREST

Section 9.1 Compliance Program. The Company shall at all times have in place a compliance program (the "Program") that is consistent with the MSSP regulations. The Company shall at all times conduct its operations in compliance with the Program. The Company shall appoint a compliance officer with responsibility for implementation, maintenance and oversight of the Program. The compliance officer shall report directly to the Management Board, and shall provide regular reports to the Management Board. Individuals that are legal counsel to the Company, or who provide legal counsel services for the Company, may not serve as the compliance officer.

The Company and its Member intend to operate as an ACO in a manner consistent with applicable laws, including, without limitation, the federal regulations for the MSSP, which are found at 42 C.F.R. Part 425 (Section 425.10 et seq.) (Federal Register, Volume 76. No. 212, November 2, 2011, pages 67973) (the "MSSP Regulations"). Any and all Physicians, suppliers and providers participating in the NextGen, MSSP or other CMS ACO/SSP via the Company will be required to
execute a participating provider agreement which requires compliance with the requirements of such CMS ACO/SSP programs.

Section 9.2 Conflict of Interest Policy. The Management Board shall approve, implement and abide by the Company's Conflict of Interest ("COI") Policy, as may be amended from time to time. The COI Policy shall be applicable to the Member and all Managers. The Company's COI Policy shall: (i) require the Member and Managers to disclose relevant financial interests; (ii) provide a procedure to determine whether a conflict of interest exists and set forth a process to address any conflicts that arise; and (iii) shall address remedial action for the Member and Managers who fail to comply with the COI Policy.

ARTICLE X
BOOKS, RECORDS AND FISCAL MATTERS

Section 10.1 Books and Records. The Company's Executive Director shall perform day to day bookkeeping for the Company and shall keep complete and accurate records of the same. The Company shall engage the services of a certified public accounting firm ("Accounting Firm") to audit the Company's books and records using the same methods of accounting which are used in preparing the federal income tax returns of the Company to the extent applicable and otherwise in accordance with United States generally accepted accounting principles consistently applied. Such books and records shall be maintained and updated monthly, and shall be available, in addition to any documents and information required to be furnished under the Act, at an office of the Company or the Accounting Firm for examination and copying by the Member, or its, his or her duly authorized representative, upon reasonable request therefor and at the expense of the Member.

Section 10.2 Form of Records. The books and records listed in Section 10.1 may be in written form or in any other form capable of being converted into written form within a reasonable time.

Section 10.3 Inspection of Books and Records. Any Manager may examine in person or by agent or attorney, at any reasonable time, the books and records of the Company listed in Section 10.1 for a purpose reasonably related to the Manager's position as such.

Section 10.4 Bank Accounts. Bank accounts and/or other accounts of the Company shall be maintained in such banking and/or other financial institution(s) as shall be selected by the Management Board, and withdrawals shall be made and other activity conducted on such signature or signatures as determined by approval of the Management Board. Any and all records with respect to such bank accounts and/or other accounts, including, but not limited to, copies of any checks written on such account or records or other withdrawal activity, shall be available at an office of the Company or the Accounting Firm for examination and copying by the Member and any Manager, or his or her duly authorized representative, upon reasonable request therefor and at the expense of the Member or Manager.

Section 10.5 Fiscal Year. The fiscal year of the Company shall begin on the first day of October and end on the last day of September in each year.

Section 10.6 Audited Financial Statements. The Management Board shall authorize and cause to be prepared audited financial statements on an annual basis within one hundred twenty (120) days after the end of each fiscal year of the Company.
Section 10.7 Required Reports. The Management Board shall file each year a report on its activities and financial status with the Member within thirty (30) days of the Management Board's receipt of its audited financial statements for the previous fiscal year, which financial statements shall have been prepared by an independent certified public accounting firm. Such report shall include the audited financial statements and shall detail, to the extent requested by the Member, the full range of activities of the Company during such fiscal year.

Section 10.8 Required Transfers. From time to time, but no less than annually within thirty (30) days of the Management Board's receipt of its audited financial statements from the previous fiscal year, the Management Board shall examine the Company's financial status, activities, and business plan for the purpose of determining if the Company is then possessed of cash or liquid investments in excess of the needs of the Company to carry on its activities and fulfill its business plan. If such examination discloses such an excess, the Management Board shall distribute such excess to the Member as the Management Board shall determine, and such distribution shall occur, as soon thereafter as possible and reasonable, but in any event within ninety (90) days after the Management Board's receipt of the said financial statements.

ARTICLE XI
EXECUTION OF INSTRUMENTS

Section 11.1 Checks. All checks, drafts and orders for payment of money shall be signed in the name of the Company and shall be countersigned by such officer(s) or agent(s) as the Management Board shall from time to time designate for that purpose.

Section 11.2 Contracts and Conveyances. The Management Board shall have the power to designate one or more Officers or agents who shall have the power to execute instruments on behalf of the Company. When the execution of any conveyance or other instrument has been authorized without specifying the Officers or agents authorized to execute the instrument, any two of the Chair, the President and Treasurer shall be authorized to do so.

ARTICLE XII
INDEMNIFICATION

Section 12.1 Indemnification of the Management Board and Others. Subject to the further provisions of this Article XII, the Company shall hold harmless and indemnify:

(a) Any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, whether formal or informal, and whether arising out of conduct in such person's official capacity with the Company or otherwise (other than an action by or in the right of the Company), by reason of the fact that such person is or was a Manager, Committee member or Officer of the Company, or is or was serving at the request of the Company as a Manager, Committee member, Officer, employee, or agent of another business, or nonprofit corporation, partnership, limited liability company, joint venture, against expenses, including reasonable attorneys' fees, judgments, fines, and (subject to Section 12.9) amounts paid in settlement actually and reasonably incurred by him or her in
connection with such action, suit, or proceeding, if such person acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful; and

(b) Any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding by or in the right of the Company to procure a judgment in its favor by reason of the fact that such person is or was a Manager or Officer of the Company, or is or was serving at the request of the Company as a director, manager, officer, employee, or agent of another business, foreign, or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise against expenses including (1) reasonable attorneys' fees, and (2) subject to Section 11.9, amounts paid in settlement not exceeding, in the judgment of the Management Board, the estimated expense of litigating the action or suit to conclusion actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, if the Manager or Officer acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct unlawful, except that no indemnification under this subsection 12.1(b) shall be made in respect to any claim, issue, or matter as to which such person shall have been adjudged liable to the Company unless and only to the extent that a court of competent jurisdiction shall determine upon application that, despite the adjudication of liability but in view of all the relevant circumstances, such person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper. For purposes of the unless clause of the preceding sentence, the fact that a person shall have been adjudged by a court of competent jurisdiction to be liable to the Company for negligence or gross negligence not amounting to willful misconduct shall of itself create neither a presumption nor an inference that such person is not fairly and reasonably entitled to court-ordered indemnity for expenses.

Section 12.2 Method of Determining Eligibility or Indemnification. Any indemnification under this Article XII, unless ordered by the court, shall be made by the Company only as authorized in a specific case upon a determination that the applicable standard of conduct has been met, and such determination shall be made:

(a) By the Management Board by a majority vote of a quorum consisting of Managers who are not at the time parties to such action, suit, or proceeding; or,

(b) By legal counsel:

(1) Selected by the Management Board or Member in the manner prescribed in subsection 12.2(a), or
(2) If a quorum of the Management Board cannot be obtained under subsection 12.2(a), then selected by a majority vote of the full Management Board in which selection Managers who are parties may participate.

Section 12.3 Limitations on Indemnification. Anything elsewhere in this Article XII to the contrary notwithstanding, no indemnity pursuant to this Article XII (and, with respect to matters described in Subsection 12.3(a); nor advancement of expenses under Section 12.7(a)(1)) shall be paid by the Company to a Manager or Officer:

(a) On account of any action, suit, proceeding, cross-claim, or counterclaim initiated by such Manager, or Officer against the Company itself (except to enforce this Article XII) or against a third party, unless the Management Board has authorized such action, suit, proceeding, cross-claim, or counterclaim to be initiated by the Manager or Officer;

(b) In respect of any claim, issue, or matter involving remuneration or other personal benefit paid to or received by such Manager or Officer if it shall be determined by a final judgment of a court of competent jurisdiction or other final adjudication that the payment or receipt of such remuneration or other personal benefit was in violation of law;

(c) If a final decision by a court of competent jurisdiction shall determine that such indemnification is not lawful; or

(d) An account of any action that would result in any tax imposed by the Internal Revenue Service (the "IRS") upon a Manager or Officer under Section 4958 of the Code and the Treasury Regulations promulgated thereunder or any successor or similar provision.

Section 12.4 Effect of Indemnitee Success in Defending Suits. To the extent that a Manager or Officer has been successful, on the merits or otherwise, including the dismissal of an action without prejudice, in defense of any action, suit, or proceeding of the character described in Section 12.1 or Section 12.2, or in defense of any claim, issue, or matter therein, it shall be conclusively presumed that the applicable standard of conduct has been met by such Manager or Officer with respect to such action, suit, proceeding, claim, issue, or matter.

Section 12.5 Right of Indemnity as a Contract Right. The obligations of the Company to indemnify and hold harmless a Manager or Officer as set forth in this Article XII (including, without limitation, the obligation under Section 12.7 to advance the cost of defense to or on behalf of the Manager or Officer) shall be a contract right and shall continue during the period such person is a Manager or Officer of the Company (or is or was serving at the request of the Company as a director, manager, officer, employee, or agent of another business, foreign, or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise) and shall continue thereafter so long as the director, manager or officer shall be subject to any possible claim or threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that such person was a Manager or Officer of the Company or was serving in any other capacity referred to in Section 12.1, notwithstanding
that at the time when such indemnification is claimed, the claimant has ceased to serve in any of the capacities referred to in Section 7.1.

Section 12.6 Notification by Indemnitee to Company of Suit. Promptly after receipt by a Manager or Officer of notice of the commencement of any action, suit, or proceeding with respect to which an indemnification claim is to be made against the Company as set forth in this Article XII, such Manager or Officer shall notify the Company of the commencement thereof, but the omission so to notify the Company will not relieve it from any liability it may have to Manager or Officer otherwise as set forth in this Article XII.

Section 12.7 Advancement of Expenses and Conduct of Litigation. With respect to any action, suit, or proceeding as to which a Manager or Officer notifies the Company pursuant to Section 12.6 of such person's intention to seek indemnity under this Article XII:

(a) The right to indemnification shall include

(1) The right, subject to Section 11.3 and to subsections 12.7(b) and 12.7(e) below to be paid by the Company all expenses incurred in defending any such action, suit, or proceeding in advance of its final disposition; and,

(2) A presumption (in the absence of a good-faith determination in writing to the contrary) that the Management Board has made an affirmative determination that the facts then known to them would not preclude the indemnification of such Manager or Officer under the applicable standard of conduct specified in Section 12.1.

(b) Advance payment as described in subsection 12.7(a) of expenses incurred by the Manager or Officer shall be made only upon delivery to the Company of the following:

(1) a written affirmation of such person's good faith belief that such person has met the applicable standard of conduct specified in Section 12.1; and,

(2) a written undertaking, executed personally or on such person's behalf, to repay the advance of expenses if it is ultimately determined that such person did not meet the applicable standard of conduct specified in Section 12.1.

(c) The Company shall be entitled to participate therein at its own expense;

(d) Except as otherwise provided below, to the extent that it may wish, the Company jointly with any other indemnifying party similarly notified will be entitled to assume the defense thereof, with counsel reasonably satisfactory to the Manager or Officer;

(e) The Manager or Officer shall have the right to employ counsel in such action, suit, or proceeding, but the fees and expenses of such counsel incurred after notice from the Company of its assumption of the defense thereof except reasonable costs of investigation shall be at the expense of the Manager or Officer unless:
(1) The employment of counsel by the Manager or Officer has been authorized by the Company;

(2) The Manager or Officer shall have reasonably concluded that there may be a conflict of interest between the Company and him or her in the conduct of the defense of such action; or,

(3) The Company shall not in fact have employed counsel to assume the defense of such action.

In each of these cases, the reasonable fees and expenses of counsel shall be at the cost of the Company. The Company shall not be entitled to assume the defense of any action, suit, or proceeding

(1) Brought by or on behalf of the Company as described in subsection 12.1(b);

or,

(2) As to which Manager or Officer shall have made the conclusion provided for in clause (ii) of this subsection 12.7(e).

(f) The Manager or Officer will reimburse the Company for all reasonable expenses paid by the Company in defending any civil or criminal action, suit, or proceeding against the Manager or Officer in the event and only to the extent that it shall be ultimately determined by a court of competent jurisdiction that such person is not entitled to be indemnified by the Company for such expenses as authorized in this Article XII.

Section 12.8 Enforcement of Indemnity Claim Against Company. If a claim for indemnification under Section 12.1 or for the advance of expenses under Section 12.7 is not paid in full by the Company within ninety (90) days after a written claim has been received by the Company, the claimant may at any time thereafter bring suit against the Company to recover the unpaid amount of the claim, and if successful in whole or in part, the claimant shall also be entitled to be paid the expense of prosecuting such claim. It shall be a defense to any action including an action brought to enforce a claim under Section 12.7 for expenses incurred in defending any proceeding in advance of its final disposition where the requirements described in Section 12.7 have been satisfied that the claimant has failed to meet a standard of conduct that makes it permissible under applicable law for the Company to advance to or indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Company. Neither:

(a) the failure of the Management Board to have made a determination prior to the commencement of the claimant's action that indemnification of the claimant is permissible in the circumstances because he has met the required standard of conduct;

(b) an actual determination by the Management Board that the claimant has not met such standard of conduct; nor,
the termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall be a defense to the claimant's action for indemnification under Section 12.1 or for the advance of expenses under Section 12.7 or create a presumption that the claimant has failed to meet the required standard of conduct.

**Section 12.9 Settlements.** The Company shall not be liable to indemnify a Manager or Officer as provided in this Article XII for any amount paid in settlement of any action or claim effected without its written consent, which shall not be unreasonably delayed or withheld, and the Company shall not be obligated to indemnify any Manager or Officer as provided in this Article XII who unreasonably withholds his or her consent to any proposed settlement that is recommended to him in writing by the Company.

**Section 12.10 Indemnification Rights Under Article XII Not Exclusive.** The rights to indemnification and advancement of expenses provided by or granted pursuant to this Article XII shall

(a) be subject to any applicable limitations of state or federal law, but they shall not be deemed exclusive of any other rights to which the person seeking indemnification or obtaining advancement of expenses is entitled under any law, bylaw, contract, or authorization of the Management Board (or the Member) regardless of whether Managers authorizing such indemnification are beneficiaries thereof, or otherwise, both as to action in his official capacity, and as to action in another capacity while holding such office; and,

(b) continue as to a person who has ceased to be a Manager or Officer and shall inure to the benefit of such person's heirs, legal representatives and assigns until expiration of the applicable statute of limitation; provided, however, that no such other indemnification measure shall permit indemnification of any person for the results of such person's willful or intentional misconduct.

**Section 12.11 Company's Additional Rights to Indemnify.** The express indemnification and advancement of expenses provided by or granted pursuant to this Article XII shall not exhaust, reduce, or impair the Company's discretionary right to indemnify its Managers, Officers, employees, or agents in accordance with §1315 of the Act, as it now exists or may hereafter be amended.

**Section 12.12 Managers & Officers Insurance.** The Management Board shall have full discretion and authority to decide to purchase and maintain insurance, at the expense of the Company, on behalf of any past, present, or future Manager, Officer, employee, or agent of the Company insuring him against liabilities asserted against or incurred by him or her in any such capacity or arising from such person's status or former status as a Manager Officer, employee, or agent, whether or not the Company would have the power or right to indemnify him against the same liability, all as provided in Section 1315 of the Act.

**Section 12.13 Definition of Applicable Law.** The term "applicable law," as used throughout this Article XII, shall, to the fullest extent allowed by the law under which this Article XII is from
time-to-time construed, be taken to mean the most generous (from the standpoint of an indemnification claimant) of the applicable laws in effect:

(a) during any part of the period of time within which the acts or omissions alleged in the action, suit, or proceeding in question as the basis for liability of the indemnification claimant occurred;

(b) on the date when such action, suit, or proceeding was commenced; or,

(c) on the date when the validity of the indemnification claim asserted by the indemnification claimant against the Company is finally determined or adjudicated.

Section 12.14 Severability. Each and every provision of this Article XII shall be considered severable, and to the extent any part or all of this Article XII shall be held by a court of competent jurisdiction to be invalid, void, or unenforceable in whole or in part in any particular case or generally, the remainder of this Article XII shall nevertheless be treated as valid and enforceable to the fullest extent permitted by applicable law.

ARTICLE XIII
LIMITATION OF LIABILITY

Section 13.1 Scope. No person serving as a Manager or Officer of the Company shall be individually liable for any act or omission, including, but not limited to, any breach of such person's fiduciary duty of care, resulting in damage or injury, if such person was acting in good faith and within the scope of such person's official functions and duties, provided that nothing contained in this Article XIII shall limit the liability of a Manager or Officer of the Company for

(a) Any breach of duty of loyalty to the Company;

(b) Any breach of the Company's COI Policy;

(c) Acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;

(d) Any transaction from which such person derived an improper personal benefit; or,

(e) Any action that would result in any tax imposed by the IRS upon such Manager or Officer under Section 4958 of the Code and the Treasury Regulations promulgated thereunder, or any successor or similar provision.

This Article XIII shall not limit or restrict the effect of any limitation of the liability of Managers, or Officers of the Company provided by Florida or other applicable law.

Section 13.2 Reliance Upon Reports. A Manager, or a member of any Committee, acting in reliance, in good faith, upon the records of the Company and upon information, opinions, reports or statements presented to the Company by any of its employees, Managers, Officers or Committees thereof, by any of the directors or officers of the Member, or by any other person who has been selected with reasonable care by or on behalf of the Company, as to matters that the
Manager reasonably believes are within that person's professional or expert competence, including but not limited to, the value and amount of assets and liabilities or any other facts pertinent to the existence and amount of surplus or other funds of the Company, shall not be held liable under this Article XIII.

**Section 13.3 Non-liability of Absent Manager.** A Manager shall not be liable for the commission of any act or omission if he was absent from the Management Board meeting at which the action was authorized, or if he was present at that meeting and his dissent therefrom was either noted in the minutes of the meeting or filed promptly thereafter in the registered office of the Company.

**Section 13.4 Liability Insurance.** The Company shall have the power to purchase and maintain insurance on behalf of any person who is or was a Member, Manager, officer, employee, or agent of the company, or is or was serving at the request of the company as a director, officer, member, manager, partner, trustee, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against such person and incurred by such person in any such capacity or arising out of such person's status as such, whether or not the Company would have the power to indemnify such person against such liability under the provision of this Article of the Act.

**ARTICLE XIV**

**DISSOLUTION AND TERMINATION**

**Section 14.1 Events Causing Dissolution.** The Company shall be dissolved and its affairs wound up upon the first to occur of the following events:

(a) The sale or other disposition of all or substantially all of the assets of the Company, unless the disposition is a transfer of assets of the Company in return for consideration other than cash and a determination is made not to distribute any such non-cash items to the Member;

(b) The election for any reason to dissolve the Company made by the Member;

(c) When there is no remaining Member, unless the holders of all of the financial rights in the Company agree in writing, within ninety (90) days after the cessation of membership of the Member, to continue the legal existence and business of the Company and to appoint one or more new Members;

(d) Any consolidation or merger of the Company with or into any entity unless the Company is the resulting or surviving entity; or,

(e) Entry of a decree of judicial dissolution.

**Section 14.2 Procedures on Dissolution.** Dissolution of the Company shall be effective on the day on which the event occurs giving rise to the dissolution, but the Company shall not terminate until the Articles of Organization shall be canceled in the manner set forth in the Act. Notwithstanding the dissolution of the Company, prior to the termination of the Company, as
aforesaid, the business and the affairs of the Company shall be conducted so as to maintain the continuous operation of the Company pursuant to the terms of this Agreement.

**Section 14.3 Payments Upon Dissolution.** In the event of the dissolution of the Company, the Management Board shall, after paying or making provision for the payment of all of the liabilities of the Company, dispose of all of the remaining assets of the Company (except any assets held upon condition requiring return, transfer, or other conveyance in the event of dissolution, which assets shall be returned, transferred, or conveyed in accordance with such requirements), by transferring such assets to the Member, as the Management Board shall determine; provided that the Member is at such time in existence and qualified either as an exempt organization under Section 501(c)(3) of the Code or as a governmental unit described in Section 170(c)(l) of the Code. In the event that the Member is not at such time in existence and so qualified, the Management Board shall dispose of such assets exclusively for the purposes of the Company in such manner, or to such organization or organizations organized and operated exclusively for charitable, scientific, or educational purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Code, as the Management Board shall determine. Any of such assets not so disposed of shall be disposed of by a court of general jurisdiction of the county in which the principal office of the Company is then located, in such manner, or to such organization or organizations qualifying under Section 501(c)(3) of the Code, as said court shall determine.

**ARTICLE XV AMENDMENT TO THE AGREEMENT**

**Section 15.1 Amendment to Operating Agreement.** Amendments to this Agreement must be approved by the Management Board and the Member.

**ARTICLE XVI GENERAL PROVISIONS**

**Section 16.1 Notices.** Any and all notices under this Agreement shall be effective when the same has been hand delivered or received by trackable mail carrier service to his, her or its last address appearing in the records of the Company; or, transmitted by electronic mail to the e-mail appearing upon the records of the Company. A Member or manager may change his, her or its address for purposes of this Agreement by giving the Management Board notice of such change in the manner heretofore provided for the giving of notices.

**Section 16.2 Word Meanings.** The words "herein," "hereinafter," "hereinbefore," "hereof" and "hereunder" as used in this Agreement refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires. The singular shall include the plural and the masculine gender shall include the feminine and neuter, and vice versa, unless the context otherwise requires. All section references, except as otherwise provided herein, are to sections of this Agreement.

**Section 16.3 Gender.** All references in this Agreement to the masculine gender shall be considered as references to the feminine gender as well.
Section 16.4 Binding Provisions. Subject to the restrictions on transfers set forth herein, the covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the parties hereto, their heirs, Legal Representatives, successors and assigns.

Section 16.5 Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Florida, including the Act, as interpreted by the courts of the State of Florida, notwithstanding any rules regarding choice of law to the contrary.

Section 16.6 Counterparts. This Agreement may be executed in several counterparts and as so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all of the parties have not signed the original or the same counterpart.

Section 16.7 Severability of Provisions. Each provision of this Agreement shall be considered separable. If for any reason any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid, and if for any reason any provision or provisions herein would cause the Member to be liable for or bound by the obligations of the Company, such provision or provisions shall be deemed void and of no effect.

Section 16.8 Section Titles. Section titles are for descriptive purposes only and shall not control or alter the meaning of this Agreement as set forth in the text.

Section 16.9 Entire Agreement. This Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter.

Section 16.10 Waiver of Partition. Each Member agrees that irreparable damage would be done to the Company if the Member brought an action in court to dissolve the Company. Accordingly, each Member agrees that he or she shall not, either directly or indirectly, take any action to require partition or appraisal of the Company or of any of the assets or properties of the Company, and notwithstanding any provisions of this Agreement to the contrary, each Member (and his or her successors and assigns) accepts the provisions of this Agreement as his or her sole entitlement on termination, dissolution and/or liquidation of the Company and hereby irrevocably waives any and all rights to maintain any action for partition or to compel any sale or other liquidation with respect to his or her interest, in or with respect to, any assets or properties of the Company. Each Member further agrees that he or she or it will not petition a court for the dissolution, termination or liquidation of the Company.

Section 16.11 No Impairment. The Company shall not amend, modify or repeal any provision of the Articles of Organization of the Company or this Agreement in any manner which would alter or change the rights, preferences, privileges or powers of, or the restrictions provided for the benefit of, the Member, without the express prior written consent of the Members of the class so impacted in each and every such instance; nor shall the Company, through any reorganization, transfer of assets, merger, dissolution, issue, sale or distribution of Units or any other voluntary action, avoid or seek to avoid the observance or performance of any terms of this Agreement for the benefit of the Member, without the express prior written consent of the Member. The Company
shall in good faith take any and all actions which are necessary or appropriate in order to protect the rights of the Member.

**Section 16.12 Specific Performance or Injunctive Relief.** The Member and the Company hereby declare that it is impossible to measure in money the damages which may accrue to one or more of them by reason of the failure of a party to perform any of its obligations hereunder. Therefore, if any party hereto shall institute any action or proceeding to enforce the provisions of this Agreement, any person (including the Company) against whom such action or proceeding is brought hereby waives the claim or defense therein that such party has or may have an adequate remedy at law and agrees not to urge in any such action or proceeding that such a remedy exists. Furthermore, any party seeking to enforce the provisions of this Agreement shall have the right to specific performance, injunctive or other equitable relief without the requirement to post bond.

**IN WITNESS WHEREOF,** this Agreement is executed as of the date first written above.

**COMPANY: BEST CARE COLLABORATIVE, LLC**

By: ____________________________
    Scott Nygaard, M.D.
    President

**MEMBER: LEE MEMORIAL HEALTH SYSTEM**

By: ____________________________
    Stephen R. Brown, M.D.
    Chairman, Lee Memorial Health System
    Board of Directors
Exhibit A

Management Board Selection Criteria and Initial Selection

Initial Management Board Composition - The composition of the initial Management Board shall be as follows:

- Appointment of three (3) LMHS Executives, that possess and satisfy the qualifications for Class A Managers described in Article VI and below, as Class A Managers;
- Appointment of twelve (12) Class B Managers consisting of eight (8) primary care Physicians and four (4) specialist Physicians that possess and satisfy the qualifications for Class B Managers described in Article VI and below; and,
- Appointment of a community member who is a Medicare beneficiary, and the appointment of a community member who is a consumer advocate, that possess and satisfy the qualifications described in Article VI as Class C Managers. One individual can serve as both the Medicare beneficiary and consumer advocate.

Management Board Selection Criteria – Class A and Class B Managers shall be expected to meet the following selection criteria:

1. Commitment to the Company's vision, strategy and goals;
2. Ability to contribute expertise in areas of clinical performance improvement, care coordination, improving efficiency in care delivery, physician leadership, payer contracting/managed care, general management, business/finance, or physician organization;
3. Ability to participate and disagree constructively. Solution oriented;
4. Collaborative (Willing to understand and demonstrate respect for partner interests);
5. Objectivity (Able prioritize the goals of the ACO above personal, specialty or practice interests when participating in ACO governance);
6. Credibility with fellow physicians, payers, management;
7. Absence of conflicts of interest (i.e. serving in a leadership and or governance capacity for competing ACO, health plan or similar organization); and,
8. Willingness/ability to serve and attend meetings.
**Terms of Initial Physician Directors:** The initial terms of the Physician Directors shall be staggered as follows:

- 4 Class B Managers shall be appointed for an initial term of one year.
- 4 Class B Managers shall be appointed for an initial term of two years.
- 4 Class B Managers shall be appointed for an initial term of three years.

**Initial Board:** The appointed initial Management Board shall consist of the following Managers:

**Class A:**

Jim Nathan, Chief Executive Officer and President of Lee Health  
John Chomeau, Chief Population Health Officer of Lee Health  
Ben Spence, Chief Financial Officer of Lee Health

**Class B:**

<table>
<thead>
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<th>INITIAL TERM</th>
<th>SPECIALTY</th>
<th>STATUS</th>
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<tr>
<td>Dr. Larry Antonucci</td>
<td>Three Years</td>
<td>Specialist</td>
<td>Employed</td>
</tr>
<tr>
<td>Dr. Scott Nygaard</td>
<td>Three Years</td>
<td>Specialist</td>
<td>Employed</td>
</tr>
<tr>
<td>Dr. Venkat Prasad</td>
<td>Three Years</td>
<td>Primary Care</td>
<td>Employed</td>
</tr>
<tr>
<td>Dr. Alfred Gitu</td>
<td>Three Years</td>
<td>Primary Care</td>
<td>Employed</td>
</tr>
<tr>
<td>Dr. Patty Daneshmand</td>
<td>Two Years</td>
<td>Primary Care</td>
<td>Employed</td>
</tr>
<tr>
<td>Dr. Gilberto Riveron</td>
<td>Two Years</td>
<td>Primary Care</td>
<td>Employed</td>
</tr>
<tr>
<td>Dr. Jeannie Arana</td>
<td>Two Years</td>
<td>Primary Care</td>
<td>Employed</td>
</tr>
<tr>
<td>Dr. Darryl Tanski</td>
<td>Two Years</td>
<td>Specialist</td>
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<td>Dr. Tom Harris</td>
<td>One Year</td>
<td>Primary Care</td>
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<tr>
<td>Dr. Diana Young</td>
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</tr>
<tr>
<td>Dr. Jason Triana</td>
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<td>Primary Care</td>
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</tr>
<tr>
<td>Dr. Colleen Tallen</td>
<td>One Year</td>
<td>Specialist</td>
<td>Employed</td>
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</table>

**Class C:**

To be determined.

**Ex Officio:**

Sanford Cohen, M.D., Chairman of Lee Memorial Health System Board of Directors
DATE: May 30, 2019

LEGAL SERVICE REVIEW? YES_X__ NO__

SUBJECT: Medicaid Provider Service Network / Medicare Next Gen Accountable Care Organization

REQUESTOR & TITLE: John Chomeau, Chief Population Health Officer

PREVIOUS BOARD ACTION ON THIS ITEM (IF ANY)

On April 13, 2017, the Board approved the creation of a limited liability company (called “Best Care Assurance, LLC”) to develop a Medicaid Provider Service Network (PSN).

On June 1, 2017, the Board approved the Operating Agreement for Best Care Assurance, LLC.

SPECIFIC PROPOSED MOTION:

• Approve Administration’s recommended amendments to the Best Care Collaborative Operating Agreement to 1) increase the size of the BCC Board of Managers; 2) Add a requirement that certain items be approved by a majority of Class A and Class B Managers; and 3) correct certain technical errors in the prior version of the Operating Agreement.

FINANCIAL IMPLICATIONS

Budgeted Account __X__ Non-Budgeted ____

The expenses for participation in the Medicaid Provider Service Network have been budgeted, and Administration does not anticipate any additional expenses from the proposed amendments to the Operating Agreement.

STAFFING & OPERATIONAL IMPLICATIONS

The proposed motion will enable Lee Health to continue to promote both (1) the efficient delivery of value-based care in the community, and (2) the health and wellbeing of the local Medicaid population.

PURPOSE/REASON FOR RECOMMENDATION

Continued support of the Medicaid Provider Service Network Program will align Lee Health with the nationwide movement towards value-based care and should result in better health outcomes for Medicaid members.

SUMMARY

• Lee Health has devoted substantial time and resources to developing a Medicaid Provider Service Network Program managed by Best Care Assurance, LLC.
• Lee Health believes that the proposed amendments to the Operating Agreement will aid in the Medicaid Provider Service Network Program’s success.
OPERATING AGREEMENT OF
BEST CARE ASSURANCE, LLC
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OPERATING AGREEMENT OF
BEST CARE ASSURANCE, LLC

This Operating Agreement (this “Agreement”) of Best Care Assurance, L.L.C, a Florida limited liability company (the “Company”), is made and effective as of the ___ day of __________, 2019, by Lee Memorial Health System (“LMHS”), a special purpose district created by special act of the Florida Legislature (“LMHS” or the “Member”).

ARTICLE I
DEFINITIONS

Section 1.1 Definitions. Terms not otherwise defined in this Agreement shall have the following meanings:

“Act” shall mean the Florida Revised Limited Liability Act, Florida Statutes Chapter 605, as amended from time to time.

“Affiliate” shall mean any entity in which LMHS (as hereinafter defined) is the sole member or shareholder.

“Agency” or “AHCA” means the State of Florida Agency for Health Care Administration.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Covered Lives” means persons who are eligible for covered services pursuant to a Provider Agreement.

“Health Care Provider” means Florida-licensed health care professionals or licensed health care facilities, federally qualified health care centers, and home health care agencies.

“Medicaid” means the medical assistance program authorized by Title XIX of the Social Security Act, 42 U.S.C. ss. 1396 et seq., and regulations thereunder, as administered in this state by the agency.

“Medicaid recipient” or “recipient” means an individual who the department or, for Supplemental Security Income, the Social Security Administration determines is eligible pursuant to federal and state law to receive medical assistance and related services for which the agency may make payments under the Medicaid program. For the purposes of determining third-party liability, the term includes an individual formerly determined to be eligible for Medicaid, an individual who has received medical assistance under the Medicaid program, or an individual on whose behalf Medicaid has become obligated.

“Network” means the network of providers established by Best Care Assurance, LLC to service its Provider Service Network.

“Payor” means AHCA, the Florida Depart of Health, health maintenance organizations and other governmental and private managed care providers that have or may enter into
agreements with the Network or with other entities that may be established by the Company to arrange for the provision of health care services to Covered Lives or provide third party administration or administrative services.

“Provider Service Network”, “Network” or “PSN” means an entity qualified pursuant to Florida Statute § 409.912(2) of which a controlling interest is owned by a health care provider, or group of affiliated providers, or a public agency or entity that delivers health services that has created a network of providers to provide care under a contract with AHCA to provide services to Medicaid recipients in the Service Area.

“Service Area” means ACHA Region 8 or such other region as may be established by ACHA to include Lee County, Florida.

“Treasury Regulations” shall mean the income tax regulations, including temporary regulations, promulgated under the Code, as from time to time in effect.

ARTICLE II
ORGANIZATION

Section 2.1 Name. The name of the limited liability company is Best Care Assurance, LLC.

Section 2.2 Organization. The Company has been organized as a single member Florida limited liability company under and pursuant to the Act through the filing of Articles of Organization with the Secretary of State of the State of Florida. The Member shall take any other actions as may be necessary for continuation of the Company as a limited liability company under the provisions of the Act and the terms of this Agreement. At all times, the Company shall be majority owned by a Health Care Provider, group of affiliated providers, public agency or entity delivering health services.

Section 2.3 Background and Purpose. The purpose of the Company shall be to:

(a) Function and operate as a PSN and participate in contract(s) with the State of Florida to provide managed care services to Medicaid recipients in the Service Area as approved by the Company;

(b) Improve the health of patients and populations served by the Company and served by the Member, members of the Member's medical staff, and physicians and other health care providers in the community served by the Member; reduce total healthcare costs; eliminate unnecessary clinical variation; monitor the health care services provided through and arranged by the Company; integrate the provision of care provided by providers contracted through the Company; contract with government and private health benefit plans on behalf the providers contracted with the Company; increase the quality of health care services provided by providers contracted with the Company; improve the patient experience for patients receiving services from providers contracted with the Company;
(c) Become accountable for the quality, cost and overall care of patients and beneficiaries assigned or attributed to Company; promote evidence-based medicine, patient engagement and the coordination of patient care;

(d) Create and provide a Network to provide services to Medicaid recipients and to Children's Medical Services recipients participating in Title XIX (42 U.S.C. §§ 1396-1396w-S) and Title XXI (42 U.S.C. §§ 1397aa-1397mm) in the Service Area;

(e) Conduct activities, to the extent consistent with and not contrary to any applicable PSN laws and regulations, and that are consistent with the charitable and educational purposes of the Member within the meaning of Section 501(c)(3) of the Code; and,

(f) Engage in any or all other lawful activities related to PSNs for which limited liability companies may be organized under the Act and which the Member and/or Management Board may deem to be in the best interests of the Company, and to do all other things deemed by the Member and/or Management Board to be necessary or desirable in connection with such activities.

Section 2.4 Restriction on Activities. The Company shall not:

(a) Carry on any activities not permitted to be carried on by a company exempt from Federal income tax under Section 501(c)(3) of the Code or by a company that contributions to which are deductible under Section 170(c)(2) of the Code; and,

(b) Authorize nor create nor support any affiliate or subsidiary of the Company.

Section 2.5 No Private Benefit. Except as provided with respect to distribution of shared savings earned pursuant to participation in a contract with AHCA or reasonable compensation paid for services rendered to or for the Company affecting one or more of its purposes,

(a) No part of the net earnings of the Company shall inure to the benefit of, or be distributable to Directors, officers, or other private persons; and,

(b) No Manager or Officer of the Company, or any person shall be entitled to share in the distribution of any of the Company assets on dissolution of the Company.

Section 2.6 No State Law Partnership. The Member and the Company intend that the Company not be a partnership (including a limited partnership) or joint venture and this Agreement may not be construed to suggest otherwise. The Member intends that, until an election is otherwise made pursuant to Section 301.7701-3(c) of the Treasury Regulations, the Company be taxed as a disregarded entity for federal income tax purposes.

Section 2.7 Permissible Relationships. The Member understands that the Company's operations are subject to various state and federal laws regulating permissible relationships between the Member and entities such as the Company, including 42 U.S.C. § 1320a-7b(b) (the “Anti-Kickback Statute” or “Fraud and Abuse Statute”), and 42 U.S.C. § 1395nn (the “Stark Act”). It is
the intent of the parties that the Company operate in a manner consistent with the foregoing statutes.

Section 2.8 Title to Company Assets. Title to Company assets, whether real, personal or mixed and whether corporeal or incorporeal, shall be deemed to be owned by the Company as an entity and not the Member. Title to any or all of the Company assets may be held in the name of the Company or one or more of its affiliates or one or more nominees, as the Management Board may determine. All Company assets shall be recorded as the property of the Company in its books and records, irrespective of the name in which record title to such Company assets is held.

Section 2.9 Registered Office and Registered Agent. The Company's registered office and registered agent shall be the registered office and agent named in the Articles of Organization or such other office or agent as the Management Board may designate from time to time in the manner provided by the Act.

Section 2.10 Other Offices. The Company may also have offices at such other places as the Management Board may from time to time determine or the business of the Company may require.

Section 2.11 Term. The term of the Company shall begin upon the acceptance of the Articles of Organization by the State of Florida Division of Corporations and its duration shall be perpetual unless sooner dissolved in accordance with this Agreement or pursuant to the Act.

ARTICLE III
MEMBER OF THE COMPANY

Section 3.1 Member; Action by Member. The sole Member of the Company is LMHS, a special purpose district created by special act of the Florida Legislature. Any action permitted or required to be taken pursuant to this Agreement by the Member may be taken on behalf of the Member by its President and Chief Executive Officer or by any other officer authorized by the board of directors of the Member.

Section 3.2 Member Reserved Powers. In addition to any other actions for which approval by the Member is required by this Agreement, the Member's approval shall be required to authorize any of the following matters, and the Management Board shall not take any of the actions below absent such Member approval:

(a) Amendments to the Company's Articles of Organization or this Agreement;

(b) Change of the control of the Company or merger, consolidation or dissolution of the Company;

(c) Sale, lease or mortgage of all or substantially all of Company's assets;

(d) Approval of a guarantee by Company of debts of others in excess of limits approved by the Member;

(e) Incurrence of non-budgeted expenditures and incurrence of indebtedness above limits approved by the Member from time to time;
(f) With the approval of the Management Board, removal of a Manager;

(g) Admittance, and terms thereof, including capital contributions, for the addition of new members to the Company; and,

(h) Any action or plan of the Company that the Member, in its sole discretion, believes may impose significant risk to the tax-exempt status, licensure, or accreditation of the Member or any facility operated by the Member, or which may impose significant legal, regulatory, or financial risk to the Company, the Member or any facility operated by any of the foregoing.

Section 3.3 Limitation of Liability. The Member shall not be liable under a judgment, decree or order of the court, or in any other manner, for a debt, obligation or liability of the Company.

ARTICLE IV
CAPITAL CONTRIBUTIONS

Section 4.1 Initial Funding Requirements. LMHS agrees to make an initial capital contribution in an amount satisfactory for the Company to perform its purposes.

Section 4.2 Future Capital Requirements. The Member shall not be obligated to make any capital contributions or loans to the Company (except as provided in Section 4.1 relating to Initial Funding Requirements), or otherwise supply or make available any funds to the Company, even if the failure to do so would result in a default of any of the Company's obligations or the loss or termination of all or any part of the Company's assets or business.

Section 4.3 Loans. In the event that the Company requires additional funds to carry out its purposes, to conduct its business, or to meet its obligations, the Company may borrow funds from such lender(s), including the Member, on such terms and conditions as are approved by the Board of Managers, all on such terms as reflect fair market value. It is specifically provided that no such terms or conditions shall impose any personal liability on any Member without the prior written consent of such Member. No Member shall be entitled, obligated or required to make any loan to or guarantee a loan for the Company or make any Capital Contribution to the Company. No loan made to the Company by any Member shall constitute a Capital Contribution to the Company for any purpose.

Section 4.4 Third Party Liabilities. The provisions of this Article are not intended to be for the benefit of any creditor or other person (other than a Member in its, his or her capacity as a Member) to whom any debts, liabilities or obligations are owed by (or who otherwise has any claim against) the Company or any Member. Moreover, notwithstanding anything contained in this Agreement, including specifically but without limitation this Article, no such creditor or other person shall obtain any rights under this Agreement or shall, by reason of this Agreement, make any claim in respect of any debt, liability or obligation (or otherwise) against the Company or any Member.

Section 4.5 No Withdrawal of or Interest on Capital. Except as otherwise provided in this Agreement, (i) the Member shall not have any right to demand and receive property of the Company in exchange for all or any portion of its, his or her Capital Contribution, and (ii) no interest or preferred return shall accrue or be paid on any Capital Contribution.
Section 4.6 Liability of Member for Capital. No Member shall have any liability to restore any negative balance or to contribute to, or in respect of, the liabilities or the obligations of the Company, or to restore any amounts distributed from the Company, except as may be required specifically under this Agreement, the Act or other applicable law. No Member shall be personally liable for any liabilities or obligations of the Company or any of its Member, unless agreed to by the Member.

ARTICLE V
DISTRIBUTIONS

Section 5.1 Distribution of Company Funds - In General. Except as necessary to comply with the Sections of this Article V, all Net Operating Cash Flow of the Company over and above reasonable reserves shall be distributed at least annually to the Member.

Section 5.2 Distribution Upon Dissolution. Amounts or assets available upon dissolution, and after payment of, or adequate provision for, the debts and obligations of the Company, shall be distributed and applied in the following priority:

(a) First, to fund reserves for liabilities not then due and owing and for contingent liabilities to the extent deemed reasonable by approval of the Management Board, provided that, upon the expiration of such period of time as the Management Board, acting by approval, shall deem advisable, the balance of such reserves remaining after payment of such contingencies shall be distributed in the manner hereinafter set forth in this Section; and,

(b) Second, to the Member.

Section 5.3 Distribution of Assets in Kind. No Member shall have the right to require any distribution of any assets of the Company in kind.

Section 5.4 Distributions in Compliance with the Law. All distributions shall be in compliance with all state and federal laws for not for profit entities, including, but not limited to IRS Bulletin 2014-46.

ARTICLE VI
MANAGEMENT

Section 6.1 Management of the Company's Affairs. Subject to the powers reserved to the Member set forth in Section 3.2, the property, funds, affairs and business of the Company shall be managed solely by its Board of Managers (the “Management Board”), which shall constitute the “manager” of the Company within the meaning of the Act and which shall serve as the governing body of the Company. The Management Board shall have and is vested with the full power and authority of the Company, except as may be expressly limited by law, the Articles of Organization or this Agreement. The Management Board shall have the power to act as agent of the Company to do or cause to be done by delegation to the Officers or others any and all lawful and ethical things for and on behalf of the Company. Without limiting the foregoing, the powers of the Management Board shall include, but not be limited to:
(a) The sole and exclusive authority to execute the functions of the Company's participation in any PSN program, and to make final decisions on behalf of such PSN;

(b) Execute contracts with the State of Florida Department of Health to serve as a PSN;

(c) Responsibility for the oversight and strategic direction of the Company;

(d) Establish a Network to provide services to Medicaid recipients in the Service Area;

(e) Provide third party administration services and administrative functions for the PSN;

(f) Establish, as necessary, on a prepaid or fixed-sum basis a restricted insolvency protection account;

(g) Establish a quality assurance program for the PSN;

(h) Determining the criteria for credentialing of participating physicians and other Providers (as applicable);

(i) Overseeing the Company's management and holding the management and Officers accountable for clinical integration, quality and utilization activities;

(j) Review and approval of Company processes, policies and protocols, including care management protocols, data sharing and reporting processes and quality of care protocols;

(k) Review and approval of contracting arrangements for the provision of healthcare and/or care management services;

(l) Assessing dues, assessments and service fees, if any, on participating physicians and other providers;

(m) Conducting, directly or through designated agents, peer and utilization review of services provided by participating physicians and other providers;

(n) Developing, implementing and overseeing the strategic plan, operating budget, patient-centered objectives, the annual financial plan and information system plans for the Company;

(o) Establishing quality of care and reporting standards; negotiating and entering into payor arrangements;

(p) Determining risk-sharing arrangements among participating physicians and Providers/Suppliers;

(q) Directing and overseeing the activities and duties of the Officers, senior leadership and employees of the Company;
Establishing and enforcing compliance procedures by such means and corrective actions as the Management Board may prescribe; and,

The power to adopt, amend, and enforce rules and regulations for the conduct of the affairs of the Company.

In exercising its responsibilities hereunder the Management Board shall (i) have and maintain a transparent governing process; (ii) diligently and faithfully devote as much of their time to the business of the Company as may be reasonably necessary to properly conduct the affairs of the Company; however, the individual Managers shall not be required to devote their full time to such duties; and (iii) fulfill their duty of loyalty to the Company to conduct the affairs of the Company in the best interests of the Company, including the safekeeping and use of all funds and assets, whether or not in its immediate possession and control, and the Management Board shall not employ or permit others besides the Management Board to employ such funds or assets in any manner except for the benefit of the Company and/or the Member.

Section 6.2 Foreign Qualification. Before the Company transacts business in any jurisdiction other than Florida in a manner that would require the Company to qualify or register to do business in the jurisdiction, the Management Board shall, to the extent procedures are available and those matters are reasonably within the control of the Management Board, take all necessary actions to qualify the Company as a foreign limited liability company authorized to transact business in the foreign jurisdiction. Each Member shall execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with this Agreement requested by the Management Board that are necessary or appropriate to qualify, continue, and terminate the Company as a foreign limited liability company authorized to transact business in all jurisdictions in which such authorization is required.

Section 6.3 Number and Composition.

(a) The Management Board shall consist of sixteen (16) to twenty-one (21) Managers (each a “Manager”). The Member shall be responsible for appointment of the initial Managers. The initial Managers and their initial terms are identified on Exhibit A. Thereafter, Managers shall be elected to the Management Board by majority vote of the then existing Managers from a slate of nominees selected by the Governance Committee and approved by the Member. Elections of new individuals to the Management Board shall be filled by the same Class of Manager as held by the former Manager or in an open Class of Manager. Each Manager shall serve for a term of 3 years and meet the Manager Selection Criteria set forth in Exhibit A. The Management Board shall consist of the following classes of Managers:

(i) **Class A Managers.** There shall be four (4) Class A Managers. Class A Managers shall consist of persons who are employed by the Member or an Affiliate of the Member. Class A Managers are appointed by the Member shall not be subject to any term limits and,

(ii) **Class B Managers.** There shall be twelve (12) to fifteen (15) Class B Managers. Class B Managers shall consist of persons who are physicians
or healthcare providers or designees of healthcare providers and shall be nominated by the Governance Committee.

(b) At all times, the Board shall consist of a majority of healthcare providers.

(c) The Management Board may, from time to time, establish committees of the Management Board. Such committees shall report to the Management Board, and the Management Board shall make any final decisions binding upon the Company. The Management Board shall, at a minimum, have the following standing committees:

(i) Executive Committee (To be established at the Management Board's discretion);

(ii) Governance Committee;

(iii) Quality and Data Committee;

(iv) Contracting Committee;

(v) Credentialing and Standards Committee; and,

(vi) Compliance Committee.

(d) A quorum of the Management Board shall be established at a meeting held for any purpose only if a majority of Class A Managers are present and a majority of Class B Managers are present.

(e) The approval of a majority of the Managers present at any meeting at which a quorum is present shall be the acts of the Management Board, except as otherwise required by this Agreement. As a general rule, all matters discussed and considered by the Management Board shall be discussed in a forum in which all Managers who are present can participate.

(f) The following Management Board actions shall require the approval of a majority of both the Class A Managers and the Class B Managers:

(i) Any proposal to submit to the Member changes to the composition of the Management Board;

(ii) Any changes to the Management Board nomination process;

(iii) Incurrence of indebtedness;

(iv) Any guarantee of debt;

(v) Payment methodologies; and,

(vi) Annual budget and any non-budgeted expenditures.
g) A Manager may resign at any time by tendering his or her resignation in writing to the Chair of the Management Board. A Manager's resignation shall be effective upon receipt by the Chair of the Management Board. Except as otherwise determined by the Management Board, resignation of a Manager shall constitute resignation as a member of each Committee of the Management Board on which such person sits. Additionally, and consistent with Section 3.2 above, any Manager may be removed, with or without cause, by a majority vote of the Management Board with approval of the Member.

h) If a position on the Management Board held by any Manager becomes vacant for any reason such vacancy will be filled (by a nominee from the Governance Committee) by election of the Management Board. The replacement Manager must satisfy all the qualifications applicable to the vacating Manager and the Class of Managers to which the vacating Manager belonged. The replacement Manager shall be assigned to the same Class as the vacating Manager, and his or her initial term shall be the unexpired term of the vacating Manager.

Section 6.4 Manner of Exercise of Board's Authority. All responsibilities granted to the Management Board or under this Agreement shall be exercised by the Management Board as a body, and no Manager, acting alone and without prior approval of the Board, shall have the authority to act on behalf of the Management Board.

Section 6.5 Restrictions. Notwithstanding any other provision in this Agreement to the contrary, the Company shall not take any of the actions identified in Section 3.2 (Member Reserved Powers) without approval of the Member.

Section 6.6 Compensation of Managers. Managers may be reimbursed for out-of-pocket expenses incurred on behalf of the Company and reasonable compensation as determined by the Member for services rendered in their capacity as Managers.

Section 6.7 Contracts with Affiliated Persons. The Company may enter into one or more agreements, leases, contracts or other arrangements for the furnishing to or by the Company of goods, services or space with any Member, Manager or Affiliate of the Member or a Manager, and may pay compensation thereunder for such goods, services or space, provided in each case the amounts payable thereunder are reasonably comparable to those which would be payable to unaffiliated persons under similar agreements, and if the determination of such amounts is made in good faith it shall be conclusive absent manifest error.

Section 6.8 Other Activities. Subject to any other restrictions set forth in this Agreement, the Member, Managers and any Affiliates of any of them may engage in and possess interests in other business ventures and investment opportunities of every kind and description, independently or with others as long as they do not violate Article IX hereof.

Section 6.9 Annual and Regular Meetings of the Management Board. Subject to applicable law, an annual meeting of the Management Board shall be held immediately after the annual
meeting of the Member. Regular meetings of the Management Board shall be held at least quarterly at such time and place as a majority of the Managers may from time to time designate.

Section 6.10 Special Meetings of the Management Board. Subject to applicable law, special meetings of the Management Board may be called at any time by the Chair of the Management Board or by a majority of the Management Board. The business to be transacted at any special meeting shall be limited to those items of business set forth in the notice of the meeting. At least three (3) days (or seven (7) days, if notification is made by United States mail), prior to the date fixed for the holding of any special meeting, each Manager shall be notified of the time, place and purpose of such meeting. Upon certification to the Secretary by the Chair of the Management Board and President that a state of emergency or matter of extreme urgency in connection with the affairs of the Company exists, said notice may be given to each Manager twenty-four (24) hours prior to the meeting.

Section 6.11 Meeting Participation. Unless specifically limited or restricted by the Management Board, a member of the Management Board may participate in any meeting of the Management Board by telephone conference call or similar communications equipment, so long as all persons participating in any such meeting are able to hear each other. Participation in a meeting pursuant to this provision shall constitute presence in person at the meeting.

Section 6.12 Notices and Mailing. All notices required to be given to Managers pursuant to this Article shall state the authority pursuant to which they are issued (e.g., “By order of the Chair”). Except as this Agreement otherwise provides, notice of the meeting need not state the purpose thereof. Every notice shall be deemed to have been given when the same has been hand delivered to the Manager at his or her last address appearing upon the records of the Company, received by trackable mail carrier service, or transmitted by electronic mail to the Manager at his or her email address appearing upon the records of the Company.

Section 6.13 Waiver of Notice. Notice of the time, place and purpose of any meeting of the Management Board may be waived by telex, telegraph, facsimile transmission, or other recognized electronic means, or in writing, by any Manager, either before or after such meeting has been held.

Section 6.14 Action by Unanimous Written Consent. Any action that may be taken at any meeting of the Management Board or any Committee thereof may be taken without a meeting if consent in writing setting forth the action is signed by all of the Managers, whether collectively or severally, and filed with the records of proceedings of the Management Board.

ARTICLE VII
OFFICERS

Section 7.1 Officers. The officers of the Company shall be a President, a Secretary, a Treasurer, and a Chair of the Management Board (collectively the “Officers” and each an “Officer”). The number, title, term of office, and responsibilities of other officers of the Company shall be as set forth in this Article VII or as determined by the Management Board from time to time, consistent with Florida law. The President shall be selected in accordance with Section 7.2(c), the Chair of the Management Board shall be elected by a majority vote of the Management Board, and all other
Officers shall be elected or appointed as set forth herein or as determined by the Management Board from time to time based on nominations from the Governance Committee.

Section 7.2 President.

(a) Unless otherwise provided by the Management Board, the President shall serve as the Chief Executive Officer/Executive Director of the Company and shall have general and active responsibility for the supervision and management of the operations of the Company and shall ensure that all orders, policies and resolutions of the Management Board are carried out. The President shall be subject to the authority of the Management Board and shall work with all Committees of the Management Board. The President shall also be responsible for the selection and responsibilities of all of the Company's other management personnel.

(b) The President shall attend all meetings of the Management Board and its committees and act as a liaison between the Member and the Company.

(c) The President shall be elected by the Management Board from those candidates recommended by the Governance Committee and may be removed and replaced by the Management Board, without prejudice to any contract rights that he or she may have.

(d) Except as provided in Section 7.1 the President may appoint such other officers as the President may determine to be necessary and appropriate to the management and operation of the Company, provided that the duties and functions are in compliance with all laws, expressly including federal laws applicable to tax-exempt organizations. All officers appointed by the President shall report to the President or to another officer designated by the President, and the President may remove any such appointed officer, with or without cause, subject to any rights that a removed officer may have under such officer's employment agreement or policy of the Company.

Section 7.3 Terms of Office. Except for the President and the Chair, each Officer shall hold office for the term of one year, or until his or her successor is elected or appointed and qualified, and may serve an unlimited number of consecutive terms.

Section 7.4 Vacancies. Any vacancy occurring in the offices of Chair of the Management Board, Secretary, and Treasurer shall be filled by the Management Board for the unexpired term of such office. Where the vacating Officer was appointed by the President, the President may appoint a successor.

Section 7.5 Resignation or Removal of Officers. An Officer of the Company may resign, effective immediately, at any time by tendering his or her resignation in writing to the Chair. Such resignation shall be effective upon receipt. The Management Board, by majority vote and with the approval of the Member, may remove any Officer at any time, with or without cause, whenever, in the judgment of the Management Board, the best interests of the Company will be served thereby.
Section 7.6 Chair of the Management Board. The Chair shall be any Manager selected by the Management Board. The Chair shall have such duties and responsibilities as shall be delegated to him or her by this Agreement and by the Management Board from time to time. The Chair shall preside at all meetings of the Management Board. The Chair shall be generally responsible for establishing the meeting date of all meetings of the Management Board and shall, in conjunction with other Managers and the President, establish the agenda for each meeting. In the exercise of the Chair's responsibility to set the agenda for meetings of the full Management Board, the Chair may request that any Management Board committee review any item prior to the consideration of such matter by the full Management Board. The Chair may direct that any item under consideration by any Management Board committee be referred to the full Management Board for consideration.

Section 7.7 Secretary. The Secretary shall attend all meetings of Management Board. The Secretary shall keep or cause to be kept all of the non-financial records of the Company, shall record the minutes of the meetings of the Management Board, send out all notices of meetings, and perform such other duties as may be prescribed by the Management Board or its Chair. The Secretary shall also keep or cause to be kept a register of the names and addresses of each Manager and of the dates of expiration of their respective terms of office. The Secretary may be assisted in any of these duties by an Assistant Secretary as provided herein. The Secretary shall be elected by a majority vote of the Management Board.

Section 7.8 Treasurer. The Treasurer shall have charge of and be responsible for all funds, securities, receipts and disbursements of the Company, and shall report to, and shall perform such duties as may be assigned by, the President or another officer designated by the President. If required by the President, the Treasurer shall give a bond for the faithful discharge of his duties, with such surety or sureties as the President may determine. The Treasurer shall be elected by majority vote of the Management Board.

Section 7.9 Other Officers. The Management Board, upon the recommendation of the Officers of the Company, may appoint a Vice Chair, one or more Vice Presidents and Executive Vice Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers, and such other officers having such duties and responsibilities as the Management Board deems advisable.

Section 7.10 Compensation. The compensation of the Officers, if any, shall be fixed from time to time by the Management Board, and no Officer shall be prevented from receiving such compensation by reason of the fact that such officer is also a Manager or Member of the Company. Nothing herein shall require that any Officer be compensated.

ARTICLE VIII
COMMITTEES OF THE BOARD

Section 8.1 Management Board Committees. The Management Board shall, at a minimum, establish and organize the committees to the extent provided in this Article. The Management Board may establish and organize such other committees in such manner as it deems appropriate from time to time (collectively with the standing committees the “Committees” and each a “Committee”). The charge of all committees will be as determined by the Management Board from time to time. Committees will include representation of applicable clinical specialties and subspecialties, where appropriate and each committee must include at least one individual who is
a Manager. Each Committee provided for in this Article VIII or hereafter established shall have the members, powers, and authority, and be subject to such other terms and conditions as provided in this Article VIII or as provided in the resolution establishing such Committee, as the case may be.

Section 8.2 Appointment of Committee Members. Except as otherwise provided in this Article VIII, the members and the chairs of the Committees provided for in this Article VIII shall be appointed by vote of the Management Board. Committee members need not be a member of the Management Board, provided that each Committee shall have one member who is a Manager, and provided further that the Medical Director shall be a member of the Quality and Data Committee. The Management Board shall, in addition, appoint the members of and chairs of such other special committees with such powers as the Management Board shall deem appropriate, after receiving nominations made by the Governance Committee.

Section 8.3 Executive Committee. The Executive Committee shall consist of such members and perform such functions as may be established by the Management Board under policies and procedures adopted from time to time by Management Board resolution.

Section 8.4 Governance Committee. The Governance Committee shall, subject to the ultimate governance responsibilities of the Management Board, be primarily responsible for the nominations of the Management Board and Committee members as provided herein:

(a) Recommending individuals for election to the Management Board;

(b) Recommending individuals for appointment as President;

(c) Recommending individuals for appointment as Officers;

(d) Recommending candidates for consideration by the Management Board for appointment to Committees;

(e) Establishing and monitoring compliance with Management Board, Committee member and Officer selection guidelines; and,

(f) Periodically reviewing the effectiveness of management governance process.

At least four (4) weeks prior to a meeting of the Management Board at which Managers, Officers or committee members will be elected, the Governance Committee shall provide to the Member, for review and approval, a slate of nominees for Manager, Officer and/or committee member positions whose terms are expiring, with one or more eligible candidates presented for each such position. In the event the Member does not approve one or more of the nominees for Manager, the Governance Committee shall remove such individual(s) from the slate of nominees, add a new nominee(s) to the slate, and resubmit the slate of nominees to the Member for review and approval. This process shall continue until all the nominees for Manager are approved by the Member. Member approval is not required for the nomination, election or appointment of officers and committee members.
Section 8.5 Quality and Data Committee. The Quality and Data Committee shall oversee the Company's gathering and analysis of performance data and practices to set goals and take action, to identify high risk or complex patients, measure and analyze the results of performance measurement activities and oversee an annual review of the quality of care provided by the Company and the performance and patient experience. The Quality and Data Committee shall operate in accordance with the policies and procedures adopted from time to time by the Management Board. The Quality and Data Committee shall perform the following functions:

(a) Recommend clinical performance initiatives for approval by the Management Board;
(b) Assure the quality of healthcare services provided by physicians pursuant to arrangements by and between the Company and various health plans;
(c) Develop and recommend to the Management Board for approval clinical and patient care protocols, guidelines and standards,
(d) Develop and recommend to the Management Board for approval protocols or processes which will allow for the promotion of evidence-based care, beneficiary engagement and the coordination of care;
(e) Develop and recommend to the Management Board for approval processes for reporting on quality and cost metrics;
(f) Establish criteria for clinical outcomes and patient satisfaction;
(g) Develop clinical performance measurement definitions and methodology;
(h) Develop and monitor clinical performance improvement methods and systems;
(i) Monitor clinical performance reporting;
(j) Develop and recommend clinical performance incentive plan design;
(k) Develop and recommend care management systems; and,
(l) Develop and recommend clinical data strategy.

Section 8.6 Credentials and Standards Committee. The Credentials and Standards Committee shall operate in accordance with policies and procedures adopted from time to time by the Management Board. The Credentials and Standards Committee shall perform the following functions:

(a) Recommend physician credentialing criteria and methodology for approval by the Management Board;
(b) Review and recommend approval of provider credentials; and,
(c) Conduct provider disciplinary process and recommend disciplinary action.
Section 8.7 Operations and Contracting Committee. The Operations and Contracting Committee shall oversee the Company's contracting arrangements with payers and providers and will be responsible for facilitating adequate access to services by patient populations served by the Company. The Operations and Contracting Committee will recommend to the Management Board contracts with health plans, physicians, practitioners and providers to provide the full continuum of care and will foster open communication and cooperation with quality improvement activities. The Operations and Contracting Committee will evaluate, design and recommend for Management Board approval the incentive-based compensation programs which are based on the performance of the Company as a whole using clinical quality, cost and satisfaction as indicators. The Operations and Contracting Committee shall oversee the Company's web-based physician and hospital directories and also assesses the cultural, ethnic, racial and linguistic needs of its patients. The Operations and Contracting Committee shall operate in accordance with the Contracting Committee policies and procedures adopted from time to time by the Management Board. The Operations and Contracting Committee shall perform the following functions:

(a) Develop and recommend payer strategy for approval by the Management Board;

(b) Develop and recommend general contracting policy guidelines;

(c) Coordinate payer contracting and recommend contracts to Management Board for approval;

(d) Review actuarial/cost analysis;

(e) Recommend division of bundled funds;

(f) Coordination of provider subcontracting; and,

(g) Review and recommend clinical performance incentive plan awards.

Section 8.8 Compliance Committee. The Compliance Committee shall promote, support and oversee the Company's compliance responsibilities.

Section 8.9 Term of Office. Committee members shall be appointed annually at the annual meeting which shall be held in November of each year or as soon thereafter as convenient to the Management Board. Except as otherwise provided in this Agreement, each member of a Committee shall continue in office until his or her successor is appointed, unless the Committee of which he or she is a member is sooner terminated by the Management Board or until the earlier death, resignation or removal of the Committee member.

Section 8.10 Committee Meetings. Each Management Board committee shall meet at the call of its chair, who may establish a regular meeting schedule. Except for regularly scheduled committee meetings, each committee member shall be notified of the time and place of the meeting at least two (2) days, or seven (7) days if by United States mail, and not more than thirty (30) days prior to the date fixed for the holding of any meeting, provided that notice may be waived by all of the members of the committee. Unless specifically limited or restricted by the Chair of the Management Board, any member of the Management Board Committee may participate in any meeting of such Management Board Committee by conference telephone or similar
communications equipment, so long as all persons participating in any such meeting are able to hear each other. Participation in a meeting pursuant to this provision shall constitute presence in person at the meeting.

Section 8.11 Resignation or Removal of Committee Members. A member of any Committee may resign at any time by tendering his or her resignation in writing to the Chair of the Management Board. The Management Board, by a majority vote, may remove any member of any Committee, at any time, with or without cause.

Section 8.12 Notices and Mailings. All notices required to be given to Committee members pursuant to this Agreement shall state the authority pursuant to which they are issued (as, “by order of the Chair of the Committee”). Notice of the meeting need not state the purpose thereof. Every notice shall be deemed to have been given when the same has been hand delivered to the Manager at his or her last address appearing upon the records of the Company, or transmitted by electronic mail to the Manager at his or her email address appearing upon the records of the Company.

Section 8.13 Quorum.

(a) The presence in person of a majority of the members of any Committee shall constitute a quorum for the transaction of business. Except as otherwise provided in this section, the act of a majority of the voting members of any Committee present and voting at a duly constituted meeting at which a quorum is present shall be the act of the Committee.

(b) After a quorum has been established by a Committee meeting, the subsequent withdrawal of Committee members from the meeting so as to reduce the number of Committee members present at such meeting to fewer than the number required for a quorum shall not affect the validity of any action taken by the committee members at the meeting or at any adjournment thereof. A majority of the Committee members present, whether or not a quorum exists, may adjourn any meeting of the committee to another time and place. Notice of the adjourned meeting shall be given to all Committee members.

Section 8.14 Committee Action By Unanimous Written Consent. Any action that may be taken at any meeting of any Committee may be taken without a meeting if a consent in writing setting forth the action is signed by all of the Committee members, whether collectively or severally, and filed with the records of proceedings of the Committee.

Section 8.15 Other Committees. In addition to the standing Committees identified in this Article VIII, the Management Board may create such other Committees as may be required by law, applicable regulation, or by other applicable credentialing or accreditation agencies, or otherwise, all of which committees shall report to the Management Board.

ARTICLE IX
COMPLIANCE AND CONFLICTS OF INTEREST

Section 9.1 Compliance Program. The Company shall at all times have in place a compliance program (the “Program”) that is consistent with State and Federal regulations. The Company shall
at all times conduct its operations in compliance with the Program. The Company shall appoint a compliance officer with responsibility for implementation, maintenance and oversight of the Program. The compliance officer shall report directly to the Management Board, and shall provide regular reports to the Management Board. Individuals that are legal counsel to the Company, or who provide legal counsel services for the Company, may not serve as the compliance officer.

The Company and its Member intend to operate the Network in a manner consistent with applicable law. Any and all physicians, suppliers and providers participating in the Network via the Company will be required to execute an agreement which requires compliance with the requirements of the PSN program.

Section 9.2 Conflict of Interest Policy. The Management Board shall approve, implement and abide by the Company's Conflict of Interest (“COI”) Policy, as may be amended from time to time. The COI Policy shall be applicable to the Member and all Managers. The Company's COI Policy shall: (i) require the Member and Managers to disclose relevant financial interests; (ii) provide a procedure to determine whether a conflict of interest exists and set forth a process to address any conflicts that arise; and (iii) shall address remedial action for the Member and Managers who fail to comply with the COI Policy.

ARTICLE X
BOOKS, RECORDS AND FISCAL MATTERS

Section 10.1 Books and Records. The Company's Executive Director shall perform day to day bookkeeping for the Company and shall keep complete and accurate records of the same. The Company shall engage the services of a certified public accounting firm (“Accounting Firm”) to audit the Company's books and records using the same methods of accounting which are used in preparing the federal income tax returns of the Company to the extent applicable and otherwise in accordance with United States generally accepted accounting principles consistently applied. Such books and records shall be maintained and updated monthly, and shall be available, in addition to any documents and information required to be furnished under the Act, at an office of the Company or the Accounting Firm for examination and copying by the Member, or its, his or her duly authorized representative, upon reasonable request therefor and at the expense of the Member.

Section 10.2 Form of Records. The books and records listed in Section 10.1 may be in written form or in any other form capable of being converted into written form within a reasonable time.

Section 10.3 Inspection of Books and Records. Any Manager may examine in person or by agent or attorney, at any reasonable time, the books and records of the Company listed in Section 10.1 for a purpose reasonably related to the Manager's position as such.

Section 10.4 Bank Accounts. Bank accounts and/or other accounts of the Company shall be maintained in such banking and/or other financial institution(s) as shall be selected by the Management Board, and withdrawals shall be made and other activity conducted on such signature or signatures as determined by approval of the Management Board. Any and all records with respect to such bank accounts and/or other accounts, including, but not limited to, copies of any checks written on such account or records or other withdrawal activity, shall be available at an office of the Company or the Accounting Firm for examination and copying by the Member and
Section 10.5 Reserves. The Company shall establish and maintain such reserve accounts and may deposit therein, from time to time, such amounts as the Member or Management Board shall determine is reasonably necessary for working capital of the Network and for paying the obligations of the Network as they become due and for any contingency of the Network.

Section 10.6 Fiscal Year. The fiscal year of the Company shall begin on the first day of October and end on the last day of September in each year.

Section 10.7 Audited Financial Statements. The Management Board shall authorize and cause to be prepared audited financial statements on an annual basis within one hundred twenty (120) days after the end of each fiscal year of the Company.

Section 10.8 Required Reports. The Management Board shall file each year a report on its activities and financial status with the Member within thirty (30) days of the Management Board's receipt of its audited financial statements for the previous fiscal year, which financial statements shall have been prepared by an independent certified public accounting firm. Such report shall include the audited financial statements and shall detail, to the extent requested by the Member, the full range of activities of the Company during such fiscal year.

Section 10.9 Required Transfers. From time to time, but no less than annually within thirty (30) days of the Management Board's receipt of its audited financial statements from the previous fiscal year, the Management Board shall examine the Company's financial status, activities, and business plan for the purpose of determining if the Company is then possessed of cash or liquid investments in excess of the needs of the Company to carry on its activities and fulfill its business plan. If such examination discloses such an excess, the Management Board shall distribute such excess to the Member as the Management Board shall determine, and such distribution shall occur, as soon thereafter as possible and reasonable, but in any event within ninety (90) days after the Management Board's receipt of the said financial statements.

ARTICLE XI
EXECUTION OF INSTRUMENTS

Section 11.1 Checks. All checks, drafts and orders for payment of money shall be signed in the name of the Company and shall be countersigned by such officer(s) or agent(s) as the Management Board shall from time to time designate for that purpose.

Section 11.2 Contracts and Conveyances. The Management Board shall have the power to designate one or more Officers or agents who shall have the power to execute instruments on behalf of the Company. When the execution of any conveyance or other instrument has been authorized without specifying the Officers or agents authorized to execute the instrument, any two of the Chair, the President and Treasurer shall be authorized to do so.
ARTICLE XII
INDEMNIFICATION

Section 12.1 Indemnification of the Management Board and Others. Subject to the further provisions of this Article XII, the Company shall hold harmless and indemnify:

(a) Any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, whether formal or informal, and whether arising out of conduct in such person's official capacity with the Company or otherwise (other than an action by or in the right of the Company), by reason of the fact that such person is or was a Member, Manager, committee member or Officer of the Company, or is or was serving at the request of the Company as a Manager, committee member, officer, employee, or agent of another business, or nonprofit corporation, partnership, limited liability company, joint venture, against expenses, including reasonable attorneys' fees, judgments, fines, and (subject to Section 12.9) amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit, or proceeding, if such person acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful; and

(b) Any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding by or in the right of the Company to procure a judgment in its favor by reason of the fact that such person is or was a Member, Manager or officer of the Company, or is or was serving at the request of the Company as a director, Manager, officer, employee, or agent of another business, foreign, or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise against expenses including (1) reasonable attorneys' fees, and (2) subject to Section 12.9, amounts paid in settlement not exceeding, in the judgment of the Management Board, the estimated expense of litigating the action or suit to conclusion actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, if the Manager or officer acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct unlawful, except that no indemnification under this subsection 12.1(b) shall be made in respect to any claim, issue, or matter as to which such person shall have been adjudged liable to the Company unless and only to the extent that a court of competent jurisdiction shall determine upon application that, despite the adjudication of liability but in view of all the relevant circumstances, such person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper. For purposes of the unless clause of the preceding sentence, the fact that a person shall have been adjudged by a court of competent jurisdiction to be liable to the Company for negligence or gross negligence not amounting to willful misconduct shall of itself create neither a presumption nor an
inference that such person is not fairly and reasonably entitled to court-ordered indemnity for expenses.

Section 12.2 Method of Determining Eligibility or Indemnification. Any indemnification under this Article XII, unless ordered by the court, shall be made by the Company only as authorized in a specific case upon a determination that the applicable standard of conduct has been met, and such determination shall be made:

(a) By the Management Board by a majority vote of a quorum consisting of Managers who are not at the time parties to such action, suit, or proceeding; or,

(b) By legal counsel:

i. Selected by the Management Board or Member in the manner prescribed in subsection 12.2(a), or

ii. If a quorum of the Management Board cannot be obtained under subsection 12.2(a), then selected by a majority vote of the full Management Board in which selection Managers who are parties may participate.

Section 12.3 Limitations on Indemnification. Anything elsewhere in this Article XII to the contrary notwithstanding, no indemnity pursuant to this Article XII (and, with respect to matters described in Subsection 12.3(a); nor advancement of expenses under Section 12.7(a)(i)) shall be paid by the Company to a Manager or Officer:

(a) On account of any action, suit, proceeding, cross-claim, or counterclaim initiated by such Manager, or Officer against the Company itself (except to enforce this Article XII) or against a third party, unless the Management Board has authorized such action, suit, proceeding, cross-claim, or counterclaim to be initiated by the Manager or Officer;

(b) In respect of any claim, issue, or matter involving remuneration or other personal benefit paid to or received by such Manager or Officer if it shall be determined by a final judgment of a court of competent jurisdiction or other final adjudication that the payment or receipt of such remuneration or other personal benefit was in violation of law;

(c) If a final decision by a court of competent jurisdiction shall determine that such indemnification is not lawful; or

(d) An account of any action that would result in any tax imposed by the Internal Revenue Service (the “IRS”) upon a Manager or Officer under Section 4958 of the Code and the Treasury Regulations promulgated thereunder or any successor or similar provision.

Section 12.4 Effect of Indemnitee Success in Defending Suits. To the extent that a Manager or Officer has been successful, on the merits or otherwise, including the dismissal of an action without prejudice, in defense of any action, suit, or proceeding of the character described in Section 12.1
or Section 12.2, or in defense of any claim, issue, or matter therein, it shall be conclusively presumed that the applicable standard of conduct has been met by such Manager or Officer with respect to such action, suit, proceeding, claim, issue, or matter.

**Section 12.5 Right of Indemnity as a Contract Right.** The obligations of the Company to indemnify and hold harmless a Manager or Officer as set forth in this Article XII (including, without limitation, the obligation under Section 12.7 to advance the cost of defense to or on behalf of the Manager or Officer) shall be a contract right and shall continue during the period such person is a Manager or Officer of the Company (or is or was serving at the request of the Company as a director, manager, officer, employee, or agent of another business, foreign, or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise) and shall continue thereafter so long as the director, manager or officer shall be subject to any possible claim or threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that such person was a Manager or Officer of the Company or was serving in any other capacity referred to in Section 12.1, notwithstanding that at the time when such indemnification is claimed, the claimant has ceased to serve in any of the capacities referred to in Section 7.1.

**Section 12.6 Notification by Indemnitee to Company of Suit.** Promptly after receipt by a Manager or Officer of notice of the commencement of any action, suit, or proceeding with respect to which an indemnification claim is to be made against the Company as set forth in this Article XII, such Manager or Officer shall notify the Company of the commencement thereof, but the omission so to notify the Company will not relieve it from any liability it may have to Manager or Officer otherwise as set forth in this Article XII.

**Section 12.7 Advancement of Expenses and Conduct of Litigation.** With respect to any action, suit, or proceeding as to which a Manager or Officer notifies the Company pursuant to Section 12.6 of such person's intention to seek indemnity under this Article XII:

(a) The right to indemnification shall include

i. The right, subject to Section 12.3 and to subsections 12.7(b) and 12.7(e) below to be paid by the Company all expenses incurred in defending any such action, suit, or proceeding in advance of its final disposition; and,

ii. A presumption (in the absence of a good-faith determination in writing to the contrary) that the Management Board has made an affirmative determination that the facts then known to them would not preclude the indemnification of such Manager or Officer under the applicable standard of conduct specified in this Article.

(b) Advance payment as described in subsection 12.7(a) of expenses incurred by the Manager or Officer shall be made only upon delivery to the Company of the following:

i. a written affirmation of such person's good faith belief that such person has met the applicable standard of conduct specified in this Article; and,
ii. a written undertaking, executed personally or on such person's behalf, to repay the advance of expenses if it is ultimately determined that such person did not meet the applicable standard of conduct specified in this Article.

(c) The Company shall be entitled to participate therein at its own expense;

(d) Except as otherwise provided below, to the extent that it may wish, the Company jointly with any other indemnifying party similarly notified will be entitled to assume the defense thereof, with counsel reasonably satisfactory to the Manager or Officer;

(e) The Manager or Officer shall have the right to employ counsel in such action, suit, or proceeding, but the fees and expenses of such counsel incurred after notice from the Company of its assumption of the defense thereof except reasonable costs of investigation shall be at the expense of the Manager or Officer unless:

i. The employment of counsel by the Manager or Officer has been authorized by the Company;

ii. The Manager or Officer shall have reasonably concluded that there may be a conflict of interest between the Company and him or her in the conduct of the defense of such action; or,

iii. The Company shall not in fact have employed counsel to assume the defense of such action.

In each of these cases, the reasonable fees and expenses of counsel shall be at the cost of the Company. The Company shall not be entitled to assume the defense of any action, suit, or proceeding

i. Brought by or on behalf of the Company as described in subsection 12.1(b); or,

ii. As to which Manager or Officer shall have made the conclusion provided for in clause (ii) of this subsection 12.7(e).

(f) The Manager or Officer will reimburse the Company for all reasonable expenses paid by the Company in defending any civil or criminal action, suit, or proceeding against the Manager or Officer in the event and only to the extent that it shall be ultimately determined by a court of competent jurisdiction that such person is not entitled to be indemnified by the Company for such expenses as authorized in this Article XII.

Section 12.8 Enforcement of Indemnity Claim Against Company. If a claim for indemnification under Section 12.1 or for the advance of expenses under Section 12.7 is not paid in full by the Company within ninety (90) days after a written claim has been received by the Company, the claimant may at any time thereafter bring suit against the Company to recover the unpaid amount of the claim, and if successful in whole or in part, the claimant shall also be entitled
to be paid the expense of prosecuting such claim. It shall be a defense to any action including an action brought to enforce a claim under Section 12.7 for expenses incurred in defending any proceeding in advance of its final disposition where the requirements described in Section 12.7 have been satisfied that the claimant has failed to meet a standard of conduct that makes it permissible under applicable law for the Company to advance to or indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Company. Neither:

(a) the failure of the Management Board to have made a determination prior to the commencement of the claimant's action that indemnification of the claimant is permissible in the circumstances because he has met the required standard of conduct;

(b) an actual determination by the Management Board that the claimant has not met such standard of conduct; nor,

(c) the termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall be a defense to the claimant's action for indemnification under Section 12.1 or for the advance of expenses under Section 12.7 or create a presumption that the claimant has failed to meet the required standard of conduct.

Section 12.9 Settlements. The Company shall not be liable to indemnify a Manager or Officer as provided in this Article XII for any amount paid in settlement of any action or claim effected without its written consent, which shall not be unreasonably delayed or withheld, and the Company shall not be obligated to indemnify any Manager or Officer as provided in this Article XII who unreasonably withholds his or her consent to any proposed settlement that is recommended to him in writing by the Company.

Section 12.10 Indemnification Rights Under Article XII Not Exclusive. The rights to indemnification and advancement of expenses provided by or granted pursuant to this Article XII shall

(a) be subject to any applicable limitations of state or federal law, but they shall not be deemed exclusive of any other rights to which the person seeking indemnification or obtaining advancement of expenses is entitled under any law, bylaw, contract, or authorization of the Management Board (or the Member) regardless of whether Managers authorizing such indemnification are beneficiaries thereof, or otherwise, both as to action in his official capacity, and as to action in another capacity while holding such office; and,

(b) continue as to a person who has ceased to be a Manager or Officer and shall inure to the benefit of such person's heirs, legal representatives and assigns until expiration of the applicable statute of limitation; provided, however, that no such other indemnification measure shall permit indemnification of any person for the results of such person's willful or intentional misconduct.

Section 12.11 Company's Additional Rights to Indemnify. The express indemnification and advancement of expenses provided by or granted pursuant to this Article XII shall not exhaust,
reduce, or impair the Company's discretionary right to indemnify its Managers, Officers, employees, or agents, as it now exists or may hereafter be amended.

Section 12.12 Managers & Officers Insurance. The Management Board shall have full discretion and authority to decide to purchase and maintain insurance, at the expense of the Company, on behalf of any past, present, or future Manager, Officer, employee, or agent of the Company insuring him against liabilities asserted against or incurred by him or her in any such capacity or arising from such person's status or former status as a Manager Officer, employee, or agent, whether or not the Company would have the power or right to indemnify him against the same liability.

Section 12.13 Definition of Applicable Law. The term “applicable law,” as used throughout this Article XII, shall, to the fullest extent allowed by the law under which this Article XII is from time-to-time construed, be taken to mean the most generous (from the standpoint of an indemnification claimant) of the applicable laws in effect:

(a) during any part of the period of time within which the acts or omissions alleged in the action, suit, or proceeding in question as the basis for liability of the indemnification claimant occurred;

(b) on the date when such action, suit, or proceeding was commenced; or,

(c) on the date when the validity of the indemnification claim asserted by the indemnification claimant against the Company is finally determined or adjudicated.

Section 12.14 Severability. Each and every provision of this Article XII shall be considered severable, and to the extent any part or all of this Article XII shall be held by a court of competent jurisdiction to be invalid, void, or unenforceable in whole or in part in any particular case or generally, the remainder of this Article XII shall nevertheless be treated as valid and enforceable to the fullest extent permitted by applicable law.

ARTICLE XIII
LIMITATION OF LIABILITY

Section 13.1 Scope. No person serving as a Manager or Officer of the Company shall be individually liable for any act or omission, including, but not limited to, any breach of such person's fiduciary duty of care, resulting in damage or injury, if such person was acting in good faith and within the scope of such person's official functions and duties, provided that nothing contained in this Article XIII shall limit the liability of a Manager or Officer of the Company for

(a) Any breach of duty of loyalty to the Company;

(b) Any breach of the Company's COI Policy;

(c) Acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;

(d) Any transaction from which such person derived an improper personal benefit;
(e) A circumstance under which there is liability for improper distributions; or,

(f) Any action that would result in any tax imposed by the IRS upon such Manager or Officer under Section 4958 of the Code and the Treasury Regulations promulgated thereunder, or any successor or similar provision.

This Article XIII shall not limit or restrict the effect of any limitation of the liability of Managers, or Officers of the Company provided by Florida or other applicable law.

Section 13.2 Reliance Upon Reports. A Manager, or a member of any Committee, acting in reliance, in good faith, upon the records of the Company and upon information, opinions, reports or statements presented to the Company by any of its employees, Managers, Officers or Committees thereof, by any of the directors or officers of the Member, or by any other person who has been selected with reasonable care by or on behalf of the Company, as to matters that the Manager reasonably believes are within that person's professional or expert competence, including but not limited to, the value and amount of assets and liabilities or any other facts pertinent to the existence and amount of surplus or other funds of the Company, shall not be held liable under this Article XIII.

Section 13.3 Non-liability of Absent Manager. A Manager shall not be liable for the commission of any act or omission if he was absent from the Management Board meeting at which the action was authorized, or if he was present at that meeting and his dissent therefrom was either noted in the minutes of the meeting or filed promptly thereafter in the registered office of the Company.

Section 13.4 Liability Insurance. The Company shall have the power to purchase and maintain insurance, including, but not limited to commercial, general, professional and employment practices insurance, on behalf of any person who is or was a Member, Manager, officer, employee, or agent of the company, or is or was serving at the request of the company as a director, officer, member, manager, partner, trustee, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against such person and incurred by such person in any such capacity or arising out of such person's status as such, whether or not the Company would have the power to indemnify such person against such liability under the provision of this Article or the Act.

ARTICLE XIV
DISSOLUTION AND TERMINATION

Section 14.1 Events Causing Dissolution. The Company shall be dissolved and its affairs wound up upon the first to occur of the following events:

(a) The sale or other disposition of all or substantially all of the assets of the Company, unless the disposition is a transfer of assets of the Company in return for consideration other than cash and a determination is made not to distribute any such non-cash items to the Member;

(b) The election for any reason to dissolve the Company made by the Member;
When there is no remaining Member, unless the holders of all of the financial rights in the Company agree in writing, within ninety (90) days after the cessation of membership of the Member, to continue the legal existence and business of the Company and to appoint one or more new Members;

Any consolidation or merger of the Company with or into any entity unless the Company is the resulting or surviving entity; or,

Entry of a decree of judicial dissolution.

Section 14.2 Procedures on Dissolution. Dissolution of the Company shall be effective on the day on which the event occurs giving rise to the dissolution, but the Company shall not terminate until the Articles of Dissolution shall be filed in the manner set forth in the Act. Notwithstanding the dissolution of the Company, prior to the termination of the Company, as aforesaid, the business and the affairs of the Company shall be conducted so as to maintain the continuous operation of the Company pursuant to the terms of this Agreement.

Section 14.3 Payments Upon Dissolution. In the event of the dissolution of the Company, the Management Board shall, after paying or making provision for the payment of all of the liabilities of the Company, dispose of all of the remaining assets of the Company (except any assets held upon condition requiring return, transfer, or other conveyance in the event of dissolution, which assets shall be returned, transferred, or conveyed in accordance with such requirements), by transferring such assets to the Member, as the Management Board shall determine; provided that the Member is at such time in existence and qualified either as an exempt organization under Section 501(c)(3) of the Code or as a governmental unit described in Section 170(c)(1) of the Code. In the event that the Member is not at such time in existence and so qualified, the Management Board shall dispose of such assets exclusively for the purposes of the Company in such manner, or to such organization or organizations organized and operated exclusively for charitable, scientific, or educational purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Code, as the Management Board shall determine. Any of such assets not so disposed of shall be disposed of by a court of general jurisdiction of the county in which the principal office of the Company is then located, in such manner, or to such organization or organizations qualifying under Section 501(c)(3) of the Code, as said court shall determine.

ARTICLE XV
AMENDMENT TO THE AGREEMENT

Section 15.1 Amendment to Operating Agreement. Amendments to this Agreement must be in writing and approved by the Management Board and the Member.

ARTICLE XVI
GENERAL PROVISIONS

Section 16.1 Notices. Any and all notices under this Agreement shall be effective when the same has been hand delivered or received by trackable mail carrier service to his, her or its last address appearing in the records of the Company; or, transmitted by electronic mail to the e-mail appearing upon the records of the Company. A Member or Manager may change his, her or its address for
purposes of this Agreement by giving the Management Board notice of such change in the manner heretofore provided for the giving of notices.

**Section 16.2 Word Meanings.** The words “herein,” “hereinafter,” “hereof” and “hereunder” as used in this Agreement refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires. The singular shall include the plural and the masculine gender shall include the feminine and neuter, and vice versa, unless the context otherwise requires. All section references, except as otherwise provided herein, are to sections of this Agreement.

**Section 16.3 Gender.** All references in this Agreement to the masculine gender shall be considered as references to the feminine gender as well.

**Section 16.4 Binding Provisions.** Subject to the restrictions on transfers set forth herein, the covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the parties hereto, their heirs, legal representatives, successors and assigns.

**Section 16.5 Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Florida, including the Act, as interpreted by the courts of the State of Florida, notwithstanding any rules regarding choice of law to the contrary.

**Section 16.6 Counterparts.** This Agreement may be executed in several counterparts and as so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all of the parties have not signed the original or the same counterpart.

**Section 16.7 Severability of Provisions.** Each provision of this Agreement shall be considered separable. If for any reason any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid, and if for any reason any provision or provisions herein would cause the Member to be liable for or bound by the obligations of the Company, such provision or provisions shall be deemed void and of no effect.

**Section 16.8 Section Titles.** Section titles are for descriptive purposes only and shall not control, define, limit or alter the meaning of this Agreement as set forth in the text.

**Section 16.9 Entire Agreement.** This Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter.

**Section 16.10 Waiver of Partition.** Each Member agrees that irreparable damage would be done to the Company if the Member brought an action in court to dissolve the Company. Accordingly, each Member agrees that he or she shall not, either directly or indirectly, take any action to require partition or appraisement of the Company or of any of the assets or properties of the Company, and notwithstanding any provisions of this Agreement to the contrary, each Member (and his or her successors and assigns) accepts the provisions of this Agreement as his or her sole entitlement on termination, dissolution and/or liquidation of the Company and hereby irrevocably waives any and all rights to maintain any action for partition or to compel any sale or other liquidation with respect to his or her interest, in or with respect to, any assets or properties of the Company. Each
Member further agrees that he or she or it will not petition a court for the dissolution, termination or liquidation of the Company.

Section 16.11 No Impairment. The Company shall not amend, modify or repeal any provision of the Articles of Organization of the Company or this Agreement in any manner which would alter or change the rights, preferences, privileges or powers of, or the restrictions provided for the benefit of, the Member, without the express prior written consent of the Members of the class so impacted in each and every such instance; nor shall the Company, through any reorganization, transfer of assets, merger, dissolution, issue, sale or distribution of Units or any other voluntary action, avoid or seek to avoid the observance or performance of any terms of this Agreement for the benefit of the Member, without the express prior written consent of the Member. The Company shall in good faith take any and all actions which are necessary or appropriate in order to protect the rights of the Member.

Section 16.12 Specific Performance or Injunctive Relief. The Member and the Company hereby declare that it is impossible to measure in money the damages which may accrue to one or more of them by reason of the failure of a party to perform any of its obligations hereunder. Therefore, if any party hereto shall institute any action or proceeding to enforce the provisions of this Agreement, any person (including the Company) against whom such action or proceeding is brought hereby waives the claim or defense therein that such party has or may have an adequate remedy at law and agrees not to urge in any such action or proceeding that such a remedy exists. Furthermore, any party seeking to enforce the provisions of this Agreement shall have the right to specific performance, injunctive or other equitable relief without the requirement to post bond.

IN WITNESS WHEREOF, this Agreement is executed as of the date first written above.

COMPANY: BEST CARE ASSURANCE, LLC

By: ________________________________
    John Chomeau
    President

MEMBER: LEE MEMORIAL HEALTH SYSTEM

By: ________________________________
    Stephen R. Brown, M.D.
    Chairman, Lee Memorial Health System
    Board of Directors
Exhibit A

Management Board Selection Criteria and Initial Selection

Initial Management Board Composition - The composition of the initial Management Board shall be as follows:

• Appointment of six (6) individuals that possess and satisfy the qualifications for Class A Managers described in Article VI and below;

• Appointment of ten (10) Class B Managers that possess and satisfy the qualifications for Class B Managers described in Article VI and below; and,

Management Board Selection Criteria – Class A and Class B Managers shall be expected to meet the following selection criteria:

1. Commitment to the Company's vision, strategy and goals;

2. Ability to contribute expertise in areas of clinical performance improvement, care coordination, improving efficiency in care delivery, physician leadership, payer contracting/managed care, general management, business/finance, or physician organization;

3. Ability to participate and disagree constructively. Solution oriented;

4. Collaborative (Willing to understand and demonstrate respect for partner interests);

5. Objectivity (Able prioritize the goals of the PSN above personal, specialty or practice interests when participating in PSN governance);

6. Credibility with fellow physicians, payers, management;

7. Absence of conflicts of interest; and,

8. Willingness/ability to serve and attend meetings.
Terms of Initial Directors: The initial terms of the Directors shall be staggered as follows:

- 6 Managers shall be appointed for an initial term of five years.
- 5 Managers shall be appointed for an initial term of three years.
- 5 Managers shall be appointed for an initial term of two years.

Initial Board: The appointed initial Management Board shall consist of the following Managers:

<table>
<thead>
<tr>
<th>CLASS</th>
<th>MANAGER NAME</th>
<th>INITIAL TERM</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>John Chomeau</td>
<td>5 years</td>
</tr>
<tr>
<td>A</td>
<td>Ben Spence</td>
<td>5 years</td>
</tr>
<tr>
<td>A</td>
<td>Shelley Koltnow</td>
<td>5 years</td>
</tr>
<tr>
<td>A</td>
<td>Yemisi Oloruntola-Coates</td>
<td>5 years</td>
</tr>
<tr>
<td>A</td>
<td>Bob Johns</td>
<td>5 years</td>
</tr>
<tr>
<td>A</td>
<td>Lisa Sgarlata</td>
<td>5 years</td>
</tr>
<tr>
<td>B</td>
<td>Dr. Eric Eason</td>
<td>3 years</td>
</tr>
<tr>
<td>B</td>
<td>Dr. Asjad Khan</td>
<td>3 years</td>
</tr>
<tr>
<td>B</td>
<td>Dr. Jorge Quinonez</td>
<td>3 years</td>
</tr>
<tr>
<td>B</td>
<td>Dr. Emad Salman</td>
<td>3 years</td>
</tr>
<tr>
<td>B</td>
<td>Dr. Alex Daneshmand</td>
<td>3 years</td>
</tr>
<tr>
<td>B</td>
<td>Dr. Piedade Silva</td>
<td>2 years</td>
</tr>
<tr>
<td>B</td>
<td>Dr. David Mackoul</td>
<td>2 years</td>
</tr>
<tr>
<td>B</td>
<td>Dr. Yanet Rios</td>
<td>2 years</td>
</tr>
<tr>
<td>B</td>
<td>Dr. Viraine Weerasooriya</td>
<td>2 years</td>
</tr>
<tr>
<td>B</td>
<td>Dr. Thomas Schiller</td>
<td>2 years</td>
</tr>
</tbody>
</table>
a. Executive Summaries
   i.  Finance and Investment
       1. SEI Investment Performance
       2. Budget 2020 Operating Margin Target & Budget Assumptions

b. Recommended Actions
   i.  3 Year Construction Continuing Services Agreements
   ii. Budget 2020 Operating Margin Target & Budget Assumptions
   iii. Employee Total Rewards Program 2020
   iv.  License Agreement for Parking Spaces
3 Year Construction Continuing Services Agreements (CCNA)

1. Acute Care  
2. Outpatient
**DATE:** May 30, 2019  

**LEGAL SERVICE REVIEW?** YES_x__ NO__

**SUBJECT:** 3 Year Continuing Services Contract for Construction Management for Acute Care Facilities

**REQUESTOR & TITLE:** Dave Kistel, V.P. Facilities & Support Services

**PREVIOUS BOARD ACTION ON THIS ITEM (IF ANY)**

(Justification and/or background for recommendations – internal groups which support the recommendation)

On June 23, 2016, Lee Health Board of Directors authorized Lee Health administration to negotiate a Three (3) Year Continuing Services Contract Construction Management for Acute Care/Inpatient Services per Board Policy. The Three (3) Year Continuing Services Contract was subsequently executed. The proposed agreement, attached hereto, is the same form that was approved by this Board in 2016.

**SPECIFIC PROPOSED MOTIONS:**

**First Motion:** to accept the Certification & Selection Committee’s Rankings for the 3-Year Construction Management Continuing Services Contract for Acute Care Facilities as determined on May 16, 2019.

**Second Motion:** to authorize Lee Health administration to Proceed with contract negotiations for a Three (3) Year Continuing Services Contract for Construction Management for Acute Care Facilities, per Board Policy 20.15 D and the Consultants Competitive Negotiation Act, starting with the highest numerically ranked firm, RD Johnson Construction and, if such negotiations are not successful to authorize the Lee Health Administration to then negotiate with the next ranked firm.

**Third Motion:** Upon successful negotiation in accordance with Board Policy 20.15 D, authorize the President & Chief Executive Officer or Board Chairman to execute a Three (3) Year Continuing Services Contract for Acute Care Facilities, in substantially the same form as the attached draft contract, subject to final legal review.

**FINANCIAL IMPLICATIONS**

Budgeted Account _x____ Non-Budgeted ____

(Annual Project Budget and Total Project Budget)

The 3-year Continuing Services Contract for Acute Care will be utilized for projects that are either currently funded or will be funded in the future through capital and contingency funds as approved by Lee Health and the Board of Directors. The continuing services contracts are for individual construction projects not exceeding 2 million dollars.

**STAFFING & OPERATIONAL IMPLICATIONS**

None.

**PURPOSE/REASON FOR RECOMMENDATION**

Selection of Construction Management Firms for Acute Care Projects allows Lee Health to move forward on smaller projects without delays, in a cost effective and time efficient manner.

**SUMMARY**

(including alternatives considered, Pros and Cons)

The Certification & Selection Committee ranked firms based upon their qualifications for 3-year Continuing Services Contracts for Acute Care Services per Board Policy. RD Johnson was highest ranked firm for Acute Care Services. The Board is being asked to approve Lee Health administration to proceed with contract negotiations and execution of the contract pursuant to Board Policy 20.15 D.
## LMHS 3-YEAR CONSTRUCTION CONTINUING SERVICES AGREEMENT
### ACUTE CARE/INPATIENT FACILITIES

<table>
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<tr>
<th>FIRM</th>
<th>SELECTION COMMITTEE MEMBER ID</th>
<th>TOTAL</th>
</tr>
</thead>
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<td>DEANGELIS DIAMOND</td>
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<td>624.5</td>
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<tr>
<td>STEVENS CONSTRUCTION</td>
<td>86  85  91  95  87  79  85  92</td>
<td>700</td>
</tr>
<tr>
<td>RD JOHNSON CONSTRUCTION</td>
<td>94  99  86  98  89  95  100  97</td>
<td>758</td>
</tr>
</tbody>
</table>
CONTINUING SERVICES AGREEMENT
CONSTRUCTION MANAGEMENT SERVICES AT RISK
ACUTE CARE SERVICES

THIS AGREEMENT is made and entered into as of the _____ day of __________, 2019, by and between Lee Memorial Health System, d/b/a Lee Health, a special purpose unit of local government (“Owner”) and __________________________ (“Construction Manager”).

RECITALS:

WHEREAS, Owner is a special unit of local of local government engaged in the delivery of health care services to the residents of Lee County, Florida; and

WHEREAS, Construction Manager is a construction manager engaged in the delivery of construction management services to the residents of Southwest Florida; and

WHEREAS, in the course of fulfilling its legislative purpose, Owner periodically utilizes construction management services relating to the construction and remodeling of acute care healthcare projects requiring Agency for Health Care Administration (“AHCA”) submission, compliance and inspection (referred to as “Acute Care Project”); and

WHEREAS, the Owner and Construction Manager desire to enter into a Continuing Services Agreement for Construction Management Services at Risk relating to Acute Care Projects undertaken by Owner over the next three (3) years in which the construction costs of each-individual Acute Care Project does not exceed Two Million and No/100 Dollars ($2,000,000.00); and

WHEREAS, the specific scope of services to be performed by Construction Manager for each individual Acute Care Project (“Project”) shall be defined in work orders (“Work Order[s]”) which are issued pursuant to the terms of this Agreement. A sample copy of the Work orders to be issued under this Agreement is attached hereto as Exhibit “A”.

OPERATIVE PROVISIONS:

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner and Construction
Manager, intending to be legally bound, agree as follows:

1. **Recitals.** The recitals set forth above are true and correct and are incorporated herein in their entirety.

2. **Term.** This Agreement shall be for a term of three (3) years. The contract period shall commence on _____________ and shall terminate on ________________.

3. **Construction Manager’s Services.**

   3.1 **Scope of Services.** The specific scope of services to be performed by the Construction Manager in connection with any Acute Care Project performed under the provisions of this Agreement shall be described in detail in the Work Order issued for the Acute Care Project (“Work”). The form of the Work Order to be used is attached hereto as Exhibit “A”.

   3.2 **Basic Services.** The basic services to be performed by the Construction Manager in connection with any Work Order issued under the terms of this Agreement shall consist of the following services:

      3.2.1 Construction Manager shall provide competent supervision of all phases of the Work.

      3.2.2 Construction Manager shall cause the Work to be performed in accordance with the applicable drawings and specifications and all things indicated thereon or implied therefrom.

      3.2.3 Prior to the commencement of any construction under a Work Order, Construction Manager shall prepare and submit for Owner’s approval a Project Schedule which shall indicate the dates for starting and completion of the various stages of construction.

      3.2.4 Construction Manager shall provide scheduling and periodic updating on a monthly basis in the interest of completing the Work in the most expeditious and economical manner (“Progress Schedules”).

      3.2.5 Before performing any Work contemplated in a Work Order, Construction Manager shall carefully study and compare the
various drawings, specifications and other contract documents relevant to the Work, take field measurements of existing conditions related to the Work, observe any conditions at the project and promptly report to the Owner and Architect any errors, omissions or inconsistencies discovered by Construction Manager.

3.2.6 Construction Manager shall supervise and direct the Work, using the Construction Manager’s best skill and attention

3.2.7 Construction Manager shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work called for under a Work Order.

3.2.8 Construction Manager shall be fully and solely responsible for job site safety.

3.2.9 Construction Manager shall be responsible for the acts and omissions of Construction Manager’s employees, subcontractors and their agents and employees and any other persons or entities performing portions of the Work for or on behalf of Construction Manager or any of its subcontractors.

3.2.10 Unless otherwise provide in the Work Order, Construction Manager shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.2.11 Construction Manager shall enforce strict discipline and good order among the Construction Manager’s employees and other persons carrying out the Work Order. Construction Manager shall not permit the employment of unfit persons or persons not skilled in tasks assigned to them.

3.2.12 Construction Manager shall deliver, handle, store, and install materials in accordance with manufacturer’s instructions.

3.2.13 Construction Manager shall review for compliance with the
specifications and contract drawings, approve in writing and submit to the Architect shop drawings, product data, samples and similar submittals required by the specifications with reasonable promptness.

3.2.14 Construction Manager shall perform all work in accordance with approved submittals.

3.2.15 Construction Manager shall confine its operations at the project site to areas permitted by law, ordinances, permits, specifications and construction drawings and shall not unreasonable encumber the project site with materials or equipment.

3.2.16 Construction Manager shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

3.2.17 Construction Manager shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

3.2.18 Construction Manager shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under this Agreement. At the completion of the Work, Construction Manager shall remove from and about the Project waste materials, rubbish and Construction Manager's tools, construction equipment, machinery and surplus material.

4. **Change Orders.**

4.1 From time to time, Owner may authorize changes in Work Orders issued pursuant to this Agreement, issue additional instructions, require additional Work, or direct the omission of Work previously ordered; provided, however, that Construction Manager shall not proceed with any change involving an increase or decrease in cost or extension of the substantial completion date without the prior written authorization of Owner in accordance with the procedures set forth herein.

4.2 Owner shall order changes in the Work by giving Construction Manager a written change order request ("Change Order Request") setting forth in detail the nature of the requested change. Upon receipt of a Change Order Request, Construction Manager shall furnish to Owner a statement
setting forth in detail, with a suitable breakdown by trades and work classifications, Construction Manager’s estimate of the changes in the Guaranteed Maximum Price attributable to the changes set forth in such Change Order Request and a proposed adjustment to the substantial completion date resulting from such Change Order Request. If Owner approves in writing the estimate of Construction Manager, such Change Order Request and such estimate shall constitute a change in the Guaranteed Maximum Price and the substantial completion date shall be adjusted as set forth in such estimate. The foregoing procedure shall apply to both additive and deductive change orders. Agreement on any change orders shall constitute a final settlement on all items covered therein, subject to performance thereof and payment therefore pursuant to the terms of this Agreement. Construction Manager agrees to perform all change order Work on the basis of reimbursement to it of the cost of the Work plus the overhead and profit percentages specified herein.

4.3 It is understood and agreed that refinement and detailing will be accomplished from time to time with respect to the drawings and specifications set forth in any Work Orders issued pursuant to this Agreement. No adjustment in the Guaranteed Maximum Sum or the substantial completion date set forth in Work Orders shall be made unless such refinement or detailing results in changes in scope, quality, function and/or intent of the drawings and specifications not reasonably inferable or anticipatable by a Construction Manager of Construction Manager’s expertise and experience.

5. Owner’s Responsibilities. For each Project constructed under the terms of this Agreement, Owner shall provide Construction Manager with the following information:

5.1 Owner shall designate a representative authorized to act on Owner’s behalf with respect to the Project described in the Work Order. Owner or such authorized representative shall render decisions in a timely manner pertaining to issues submitted by Construction Manager in order to avoid unreasonable delay in the orderly and sequential progress of Construction Manager’s services.

5.2 Except for the permits and fees which are the responsibility of Construction Manager, under this Agreement, Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or
for permanent changes in existing facilities.

5.3 Owner shall furnish the services of architects, engineers and other professional consultants when such services are reasonably required by the scope of the Project.

5.4 Owner shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or this Agreement.

6. **Contract Price.**

6.1 **Compensation.** In full consideration for the performance of any Work Orders issued pursuant to this contract, Owner shall pay to Construction Manager the contract sum which shall consist of (1) the Cost of the Work; and (2) a profit and overhead component of ____ percent (___%) of the Cost of the Work ("Contract Sum"). Notwithstanding the foregoing, in no event shall the Contract Sum exceed the guaranteed maximum price established for each Work Order ("Guaranteed Maximum Price"). Owner shall not be obligated to Construction Manager for any sums in excess of the Guaranteed Maximum Price established for each Work Order.

6.2 **The Cost of the Work.** For purposes of this Agreement the phrase, "Cost of the Work" shall consist of the following items:

6.2.1 wages of hourly workers employed by Construction Manager to perform any work called for under a Work Order;

6.2.2 cost of all materials, supplies and equipment incorporated or to be incorporated in any Project described in a Work Order issued pursuant to this Agreement, including the cost of transportation and storage thereof.

6.2.3 payments due to subcontractors from the Construction Manager or made by the Construction Manager to subcontractors for their work performed pursuant to any Work Order issued under this Agreement;

6.2.4 rental charges for all temporary facilities, necessary machinery and
equipment, exclusive of hand tools used at the site of any Project described in any Work Order issued pursuant to this Agreement, whether rented from Construction Manager or any third party, equipment supplier, including installation, repairs and replacements, dismantling, removal, cost of lubrication, transportation and delivery costs thereof, which are used in the support of a subcontractor or Construction Manager's own forces in the performance of any Work called for under a Work Order issued pursuant to this Agreement, at rental charges consistent with those prevailing in the area. Automobiles and trucks shall only be rented and/or leased with the Owner's prior written consent and approval;

6.2.5 the cost of premiums for all insurance and bonds which Construction Manager is required to procure by this Agreement for any Projects described in Work Orders issued pursuant to the terms of this Agreement;

6.2.6 sales, use, gross receipts, or similar taxes related to expenses allowable as part of the Cost of the Work imposed by any governmental authority, and for which Construction Manager is liable;

6.2.7 expenses associated with telephone service, heat, light, power, water, sanitary facilities, weather protection and elevator services at the Project;

6.2.8 costs for trash and debris control and removal from the Project;

6.2.9 costs incurred due to an emergency affecting the safety of persons and property at the Project;

6.2.10 costs for watchmen and security services for the Project;

6.2.11 costs for efficient logistical control of the Project, including horizontal and vertical transportation of materials and personnel;

6.2.12 wages and salaries of Construction Manager's supervisory personnel when stationed at the Project described in a Work Order but only with Owner's written approval and only for that portion of their time devoted to performing the Work described in the Work Order; and
6.2.13 any and all permits specifically required for the performance of any Work described in a Work Order issued pursuant to this Agreement.

6.3 The Cost of the Work shall not include the following:

6.3.1 Any costs or expenses made necessary to correct defective workmanship or to correct any Work not in conformance with any plans or specifications described in the Work Order or to correct any deficiency or damage caused by the negligent acts of Construction Manager or any other party for whom it is responsible including, but not limited to, its subcontractors and suppliers;

6.3.2 general operating expenses of Construction Manager's principal and branch offices other than the field office located at the Project identified in any Work Order issued pursuant to this Agreement;

6.3.3 any part of Construction Manager's capital expenses, including interest on Construction Manager's capital employed for the Project;

6.3.4 overhead and general expenses of any kind except as may be expressly allowed in paragraph 6.1 of this Agreement;

6.3.5 any cost in excess of the guaranteed maximum price;

6.3.6 minor expenses, such as telegrams, telephone service, data processing costs, courier services, photocopies, reproductions and similar “petty cash” items; and

6.3.7 the cost of hand tools, such as shovels, hammers and the cost of expendable items, such as bits, brooms, brushes, ropes and hard hats.

7. Payment.

7.1 Progress Payments.

7.1.1 Construction Manager shall submit to the Owner monthly applications for payment in a form satisfactory to Owner
(“Application for Payment”). Each Application for Payment shall contain an itemization of all payments made to subcontractors, material suppliers and all other matters which represent a portion of the Cost of the Work as well as that portion of Construction Manager’s overhead and profit attributable to the Cost of the Work reflected in each Application for Payment.

7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. No more than one (1) Application for Payment shall be submitted to the Owner during any month.

7.1.3 Owner shall make payment to Construction Manager not later than thirty (30) days after the Owner receives the Application for Payment.

7.1.4 As an express condition precedent to the making of any progress payments, Construction Manager shall furnish to Owner the following items:

7.1.4.1 A sworn Application for Payment. In each such Application for Payment, Construction Manager shall certify that it has completed all of the Work to be performed so as to entitle it to the progress payment for which it is applying. Construction Manager shall further certify in its Application for Payment that all such work has been performed in accordance with the applicable building codes and the plans and specifications described in the Work Order and that Construction Manager knows of no deviations or defects relating to the Work performed by it. Furthermore, Construction Manager shall certify in the Application for Payment as follows: “That as of the date of this Application for Payment, all due and payable bills with respect to the Project described in the Work Order to which this Application for Payment relates have been paid to date.”

7.1.4.2 A consent of surety from the surety issuing the Public Construction Bond furnished by Construction Manager in connection with the Work Order;

7.1.4.3 A partial lien waiver for the period of time covered by the
Application for Payment complying with the provisions of Section 713.20, Florida Statutes.

7.1.4.4 Such other forms and documents as Owner, in its sole discretion may require in order to assure an effective waiver of construction lien rights and/or bond claims of any nature whatsoever.

7.1.5 Construction Manager agrees that ten percent (10%) of the amount due under each Application for Payment shall be retained by Owner until final payment is made. The amount of any retainage shall be included in Construction Manager's Application for Payment for the purpose of indicating the value of the Work performed, however, Construction Manager shall not request payment therefore from Owner until such retainage is actually due and payable.

7.2 Final Payment. The provision of the following documents shall constitute an express condition precedent to Owner's obligation to make final payment, including retainage amounts, hereunder:

7.2.1 A sworn final Application for Payment;

7.2.2 A final Contractor's Affidavit attesting to the fact that the Construction Manager has fully completed all Work to be performed under the Work Order and that all individuals, firms, or corporations furnishing material, labor, or services instant to the completion of construction and Work under the Work Order have been paid in full;

7.2.3 A final Contractor's Waiver acknowledging receipt of final payment and providing that said final payment constitutes a full release and discharge by Construction Manager to Owner of all claims and liens of Construction Manager against Owner arising out of, connected with, or resulting from performance of the Work Order.

7.2.4 Notebooks containing all warranties required under the project specifications and plans described in the Work Order as well as all warranties relating to equipment supplied by Construction Manager; and
7.2.5 A clean set of “As Built Documents”.

7.3 The payment of any Application for Payment by Owner, including the final application, does not constitute approval of or acceptance of that part of the Work to which such payment relates nor does it relieve Construction Manager of any of its obligations hereunder nor shall such payment constitute a waiver of any claims which Owner may then have or thereafter discover.

7.4 Notwithstanding any provisions hereof to the contrary, Owner shall not be obligated to make payment to Construction Manager hereunder if any one (1) or more of the following conditions exist:

7.4.1 Construction Manager is in default of any of its obligations hereunder;

7.4.2 Any part of such payment is attributable to Work which is defective or not performed in accordance with the requirements of this Agreement; provided, however, such payment shall be made as to the part thereof attributable to the Work which is performed in accordance with such requirements and is not defective;

7.4.3 Construction Manager has failed to make payments promptly to Construction Manager’s subcontractors or for material or labor used in the Work for which Owner has made payment to Construction Manager;

7.5 If Owner, in good faith, determines that the portion of the Guaranteed Maximum Price then remaining unpaid will not be sufficient to properly complete the Work contemplated in the Work Order, whereupon no additional payments will be due Construction Manager hereunder unless and until Construction Manager, at its sole cost, performs a sufficient portion of the Work so that the portion of the Guaranteed Maximum Price then remaining unpaid is determined by the Owner to be sufficient to complete the Work; or if Owner, in good faith, determines that Construction Manager has not or will not with prompt acceleration of the Work, meet the substantial completion date specified in the Work Order.

7.6 In the event-of-a bona fide dispute by Owner-of any sums for which payment has been requested, no interest shall be due on such disputed sums until such dispute is resolved, provided that all undisputed sums
shall have been paid in due course.

7.7 Owner reserves the right to issue joint checks to Construction Manager and its subcontractors or materialmen, or, to make payments to Construction Manager's subcontractors or materialmen, if, in Owner's sole judgment, it is necessary to do so in order to ensure payment to the aforesaid parties. The amount of said joint or direct checks shall be deducted from the Contract Sum.

7.8 The acceptance of final payment shall constitute a waiver of all claims by Construction Manager except those previously made in writing and identified by the Construction Manager as unsettled at the time of the final Application for Payment.

7.9 Florida Prompt Payment Act. Notwithstanding anything contained herein to the contrary, the Construction Manager agrees and acknowledges that the limited portion of the Florida Prompt Payment Act, as set forth in Section 218.735(6), Florida Statutes pertaining to “timely payment for purchases of construction services” is incorporated by reference into this Agreement with respect to the Construction Manager’s obligation to pay subcontractors. Consistent with Section 218.735(6), Florida Statutes, when the Construction Manager receives payment for labor, services or materials furnished by any subcontractor or supplier hired by the Construction Manager, the Construction Manager must remit payment due to those subcontractors and suppliers within fifteen (15) days after the Construction Manager’s receipt of payment. The Construction Manager will flow this requirement to its sub-subcontractors such that when a subcontractor receives payment from the Construction Manager for labor, services or materials furnished by sub-subcontractors or suppliers hired by the subcontractor, the subcontractor will remit payment due to those subcontractors and suppliers within fifteen (15) days after the subcontractor’s receipt of payment.

8. Setoff and Recoupment. Payment for goods, work or services to be performed under this Agreement shall be subject to setoff or recoupment for any present or future claim which Owner may have against Construction Manager in connection with this Agreement, any Work Orders issued under this Agreement or any other agreements existing between the parties.
9. Insurance. Construction Manager shall, with respect to each Work Order issued pursuant to this Agreement, provide and maintain, and require all of its subcontractors to do the same, the following types of insurance protecting the interests of Owner and Construction Manager with limits of liability not less than those set forth below or as otherwise may be required by the specifications described in any Work Order, whichever limits are greater:

9.1 Worker's Compensation Insurance. Construction Manager shall maintain worker's compensation insurance, insuring its liability under the Worker's Compensation and Occupational and Disease Laws of the State of Florida, with limits of liability not less than the minimum limits required by Florida law. The worker's compensation policy provided by Construction Manager must be endorsed with a waiver of subrogation endorsement, waiving Construction Manager's right of subrogation against Owner and any architect or engineer utilized by Owner.

9.2 Comprehensive General Liability Insurance. Comprehensive general liability insurance which shall include coverage on an “occurrence” basis for the hazards of:

9.2.1 Premises-operation;

9.2.2 Explosion, collapse and underground property damage;

9.2.3 Mold;

9.2.4 Elevators and escalators;

9.2.5 Independent contractors;

9.2.6 Products and completed operations, including coverage for explosion, collapse and underground hazards (with completed operations coverage to remain in force for two (2) years following the date of the acceptance of the Work by Owner);

9.2.7 Contractual liability;

9.2.8 Personal injury liability for all groups of offenses with the exclusion pertaining to employment removed; and

9.2.9 Incidental malpractice coverage.
Such comprehensive general liability insurance must be endorsed with a broad form property damage endorsement (including completed operations). Owner shall be named as an additional named insured on the comprehensive general liability policy. The limits of liability associated with the Construction Manager's general liability policy shall not be less than the following:

$1,000,000.00 each occurrence;

$2,000,000.00 aggregate.

Notwithstanding anything contained herein to the contrary, the coverages under the comprehensive general liability policy to be furnished by the Construction Manager must be afforded on a policy form no more restrictive than the last edition of the comprehensive general liability policy filed by the Insurance Service Office, Inc.

9.3 **Excess Liability Policy.** Construction Manager shall maintain an umbrella (excess) liability insurance policy in an amount not less than $1,000,000.00 combined single limit bodily injury/property damage, in excess of the comprehensive general liability insurance described above.

9.4 **Automobile Liability Insurance.** Construction Manager shall maintain automobile liability insurance covering all owned, non-owned and hired vehicles used in connection with the Work to be provided hereunder with a combined minimum limit of $1,000,000.00 single limit for bodily injury and property damage liability each person/each aggregate.

9.5 **Fire Insurance.** It is Construction Manager's responsibility to carry its own fire insurance on all items, including equipment that will not become an integral part of the project described in any Work Order issued pursuant to this Agreement.

9.6 **Builder's Risk Insurance.** Construction Manager shall procure builder's risk insurance covering Construction Manager and Owner at the site from loss or damage caused by or from risk of direct physical damage or loss. Construction Manager's builder's risk policy shall have minimum limits of $1,000,000.00.
9.7 **Public Construction Bond.** In the event the Guaranteed Maximum Price associated with a Work Order is in excess of Two Hundred Thousand and No/100 Dollars ($200,000.00), Construction Manager shall furnish a public construction bond in an amount equal to one hundred percent (100%) of the Guaranteed Maximum Price associated with any Work Order issued pursuant to this Agreement. The public construction bond to be issued by Construction Manager shall be in a form acceptable to Owner issued by a surety satisfactory to the Owner and shall name the Owner as an obligee. The public construction bond to be provided by Construction Manager shall comply with the provisions of Section 255.05, Florida Statutes. In such an event, the cost of the Public Construction Bond shall be added to the Contract Sum.

9.8 **Insurance Certificate.** Prior to performing any services with respect to a Work Order, Construction Manager shall file with Owner a certificate of insurance in a form acceptable to Owner. The certificate of insurance shall reflect Owner as an additional insured on Construction Manager's comprehensive general liability policy, automobile liability policy, worker's compensation policy and excess liability policy. The certificate of insurance furnished by Construction Manager shall contain a provision that the coverages afforded under the policies described thereon will not be cancelled until at least thirty (30) days' prior written notice has been given to Owner.

9.9 **Rating Insurance Companies.** All insurance companies issuing the policies provided for herein shall be licensed and approved by the Department of Insurance, State of Florida and shall have a financial rating no lower than II and a policy holder's surplus rating no lower than (A) as listed in the most current edition of A.M. Best TK Rating Guide. Companies with ratings lower than those specified herein shall only be acceptable upon the written consent of Owner.

9.10 **Extent of Coverages.** The insurance coverages referred to above are set forth in full in their respective policy forms, and the foregoing descriptions of such policies are not intended to be complete or to alter or amend any provision of the actual policies and should said descriptions conflict with the actual policies of insurance, the provisions of the policies of insurance shall govern.

9.11 **Failure to Secure Insurance.** If Construction Manager does not provide
the insurance coverages required hereunder, Owner may procure such insurance coverages at Construction Manager's expense and deduct the amount paid for said coverages from any sums owed Construction Manager.

9.12 Waiver of Subrogation. Construction Manager's policies shall be endorsed to provide that the insurers waive their rights of subrogation against Owner and also to provide that the policy provides primary coverage over any other applicable insurance coverages.

10. Safety Standards. Construction Manager agrees to require that all of its employees, subcontractors and other personnel be required to fully comply with and implement all government laws (OSHA) pertaining to safety standards. Construction Manager agrees that any fines, assessments or penalties imposed upon Owner by failure of the Construction Manager, its employees or subcontractors to comply with government standards will be fully charged back and paid for by Construction Manager.

11. Indemnification. In consideration of the first One Hundred and No/100 Dollars ($100.00) to be paid hereunder and to the fullest extent permitted by law, Construction Manager agrees to indemnify, hold harmless, and defend Owner, Owner's agents and their respective agents, servants and employees from and against all claims, costs, expenses or liabilities (including attorneys' fees) attributable to bodily injury, sickness, disease or death or damage to or destruction of property arising out of, or resulting from, the performance of Work by Construction Manager, its subcontractors, their agents, servants or employees but only to the extent caused by the negligent acts or omissions of them. Construction Manager's obligation hereunder shall only be limited to the extent of the monetary limitations set forth herein and shall not be limited by the provisions of any worker's compensation or similar act. Construction Manager's monetary obligation under this indemnification provision is specifically limited to the sum of One Million and No/100 Dollars ($1,000,000.00). The parties hereby agree that the foregoing monetary limitation bears a reasonable commercial relationship to the Agreement. This indemnity provision is intended to comply with Florida laws on indemnity and, specifically, to comply with Section 725.06, Florida Statutes, and is to be interpreted in such a way as to be enforceable.

12. Termination.

12.1 Termination for Cause by Owner.
12.1.1 If Construction Manager shall fail to commence any work called for under a Work Order or fail to diligently prosecute Work called for under a Work Order to completion in a diligent, efficient, timely, workmanlike, skillful, and careful manner and in accordance with the provisions of any specifications and/or plans identified in the Work Order, fail to use an adequate amount or quality of personnel or equipment to complete such Work without undue delay, fail to perform any of its obligations under this Agreement or any Work Orders issued pursuant to this Agreement, or fail to make prompt payments to its subcontractors, materialmen or laborers, then Owner shall have the right, if Construction Manager shall not cure such default after five (5) days' written notice thereof, to (i) terminate this Agreement or, in the alternative, any Work Orders issued pursuant the terms of this Agreement; (ii) take possession of and use of all or any part of Construction Manager's materials, equipment, supplies, or other property of any kind used by Construction Manager in the performance of Work related to any Work Order and to use such property in the completion of said Work; or (iii) complete any Work Order in a manner it deems desirable including engaging the services of other parties therefore. Any such acts by Owner shall not be deemed a waiver of any other right or remedy of Owner. If, after exercising any such remedy, the cost to Owner of the performance of the balance of any Work associated with a Work Order is in excess of that part of the Contract Sum associated with the Work Order which has not heretofore been paid to Construction Manager hereunder, Construction Manager shall be liable for and shall reimburse the Owner for such excess.

12.1.2 It is recognized that if Construction Manager is adjudged bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of creditors, or if a receiver is appointed on account of Construction Manager's insolvency, such an event could impair or frustrate the Construction Manager's performance of this Agreement and any Work Orders issued under the provisions of this Agreement. Accordingly, it is agreed that upon the occurrence of any such event, Owner shall be entitled
to request of Construction Manager or its successor in interest adequate assurance of further performance in accordance with the terms and conditions hereof. Failure to comply with such a request within ten (10) days from date of delivery of the request shall entitle Owner to terminate this Agreement. In all events, pending receipt of adequate assurance of performance and actual performance in accordance therewith, Owner shall be entitled to proceed with any Work called for under a Work Order with its own forces or with such other contractors on a time and material or other appropriate basis, the cost of which will be back charged against the amount then or thereafter paid or otherwise due Construction Manager.

12.2 Termination for Cause by Construction Manager. If Owner fails to perform any of its obligations hereunder, Construction Manager shall have the right to give Owner a written notice thereof, stating the nature of the default complained of. If Owner does not cure such default or commence the curing of such default within five (5) days after receipt of such notice, Construction Manager shall have the right to terminate this Agreement or any Work Order issued pursuant to this Agreement by giving Owner written notice thereof at any time thereafter while such default remains uncured and payment shall only be made to the Construction Manager for reasonable demobilization costs, the fee earned to the date of the termination and all outstanding costs incurred as of the date of termination. Said payment shall be Construction Manager’s sole damages for Owner’s breach. Construction Manager similarly have the right to terminate upon five (5) days' written notice if any Work to be performed in connection with the Work Order is suspended for a period of sixty (60) days or more from causes not the fault of the Construction Manager.

12.3 Termination for Owner’s Convenience. Owner hereby reserves the right to terminate this Agreement and/or any Work Orders issued under the terms of this Agreement without regard to fault or breach upon written notice to Construction Manager, effective immediately, unless otherwise provided in said notice. In the event of such a termination, Owner shall pay as the sole amount due to Construction Manager (i) all sums due for Work performed to date; and (ii) reasonable costs of demobilization. Such sums shall be due and payable on the same conditions as set forth herein for the final payment. Upon receipt of such payment, the parties
hereto shall have no further obligations to each other except the Construction Manager’s obligation to perform corrective and/or warranty work and to indemnify Owner as provided for in this Agreement. It is understood and agreed that no fee or other compensation or payment shall be due or payable for unperformed Work. Construction Manager agrees that each subcontract and purchase order issued by it will reserve for Construction Manager the same right of termination provided for in this paragraph and that Construction Manager further agrees to require that comparable provisions be included in all lower tier subcontracts and purchaser orders.

13. **Time of Completion.**

13.1 **Time.** All time limits stated in Work Orders issued pursuant to this Agreement are of the essence of this Agreement. By executing Work Orders issued pursuant to this Agreement, Construction Manager confirms that the contract time specified in a Work Order is a reasonable period for performing the Work contemplated therein.

13.2 **Substantial Completion.** The date of substantial completion shall be deemed the date on which the permitting authority for the project in question issues a final certificate of occupancy.

13.3 **Delay Damages.** CONSTRUCTION MANAGER SHALL NOT BE ENTITLED TO RECOVER ANY MONETARY DAMAGES IT MAY SUSTAIN AS A RESULT OF ANY DELAY CAUSED CONSTRUCTION MANAGER BY ANY ACT OF OWNER, ARCHITECT, ANY SEPARATE CONTRACTOR EMPLOYED BY OWNER, OR ANY OTHER CAUSES WHATSOEVER. CONSTRUCTION MANAGER FURTHER AGREES THAT IT WILL ACCEPT IN FULL SATISFACTION FOR SUCH DELAYS ANY EXTENSIONS OF TIME WHICH ARE GRANTED IT BY OWNER.

14. **Accuracy, Technical Sufficiency of Services Provided by Construction Manager.**

14.1 Notwithstanding anything contained herein to the contrary, it is understood and agreed between the parties that Owner is not examining any contract documents for accuracy and technical sufficiency, and is not under any obligation to inspect the Project. Furthermore, it is understood and agreed between the parties that neither the review, approval, nor acceptance by Owner of data, surveys, studies, designs,
specifications, calculations, plans, drawings, or any other documents furnished hereunder by Construction Manager shall in any way relieve Construction Manager of responsibility for the adequacy, completeness, and accuracy of its Work, and in no event shall Owner's review, approval, acceptance of or payment for such services be construed to operate as a waiver of any of Owner's rights under this Agreement or of any cause of action it may have, arising out of the performance of this Agreement.

14.2 Construction Manager hereby acknowledges that Owner does not make any representations or warranties to Construction Manager by virtue of the information contained in the request - for proposals or any program descriptions contained therein. Construction Manager further acknowledges that it, alone, is responsible for the accuracy, completeness, and technical sufficiency of all Work performed under this Agreement and that the information contained in Owner's request for proposal and program description does not relieve, release, or in any way whatsoever diminish Construction Manager’s ultimate responsibility for the accuracy, completeness and technical sufficiency of the Project and any Work performed hereunder.

15. **Legal Terms.**

15.1 The terms and provisions of this Agreement and any dispute arising in connection herewith shall be governed by and construed in accordance with Florida Law. The parties agree that all disputes arising under this Agreement shall be resolved by the courts and not by arbitration. The parties further agree that the venue for any legal action brought in connection with this Agreement shall be in Lee County, Florida. In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all costs incurred, including reasonable attorneys' fees.

15.2 Prior to the filing of any litigation by Owner or Construction Manager against the other (and, except as described below, as a precondition to any such filing), Owner and Construction Manager shall engage in presuit non-binding mediation. Such mediation may be requested by either party at any time and shall be conducted the same as if such mediation were ordered by Florida Circuit Court (i.e. in accordance with and subject to, all of the laws and rules applicable to court ordered mediation). Such mediation shall be conducted within a reasonable period
of time after the same is requested in writing by either party. If the parties are unable to agree upon the selection of a mediator, either party may petition or request that the Circuit Court in Lee County, Florida (or the Mediation Coordinator for the Court of Lee County, Florida) appoint a mediator. A mediator who is so appointed may only be challenged for cause, and not preemptorily. While the request for and the conducting of such a mediation may be a precondition to the filing of a civil action, in the event either party is in jeopardy of losing its right to sue (e.g., the statute of limitations is about to expire), then suit may be filed before a mediation is conducted provided that mediation is requested before, or simultaneously with the filing of such suit, and is conducted before the named defendant in the suit is required to respond to the complaint. If the scheduling of the mediation requires, the plaintiff in the suit shall grant the defendant an appropriate extension of time to respond to the complaint so as to permit the mediation to be conducted before the defendant must so respond. The mediation contemplated hereunder shall be conducted, unless otherwise agreed by the parties, in Lee County, Florida. The parties shall bear the mediator's fee and any filing fees associated with the mediation equally.

16. **Non-Exclusive Agreement.** Owner may, in its discretion, issue Work Orders to Construction Manager during the contract period contemplated herein. All such Work Orders shall incorporate by reference the documents referred to in paragraph 17 below. Owner shall not, however, be obligated to issue Work Orders to Construction Manager for all Acute Care Projects it undertakes and expressly reserves the right to utilize other construction managers to perform work of a similar nature should it, in its sole discretion, elect to do so.

17. **Contract Documents.** The “Contract Documents” shall consist of this Agreement, any Work Order issued pursuant to this Agreement, any drawings and specifications referenced in the Work Order and any change orders modifying a Work Order issued pursuant to this Agreement. These documents form the Agreement existing between the parties, and are as fully a part of the Agreement as if attached to this Agreement or repeated herein.

18. **Special Provisions.**

18.1 The Construction Manager warrants that it has not employed or retained any company or person, other than a bonafide employee working solely for Construction Manager, to solicit or secure this Agreement and that it
has not paid any person, company, corporation, individual, or firm, other than a bonafide employee working solely for Construction Manager any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

18.2 Public Entity Crime Information Statement. Any person or affiliate who has been placed on the Convicted Vendor List following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity, for the construction or repair of a public building, or public work, may not submit bids or leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY 2 for a period of thirty-six (36) months from the date of being placed on the Convicted Vendors List.

18.3 The Construction Manager affirmatively represents to Owner that it shall perform its services under this Agreement in a skillful and competent manner in accordance with good and sound healthcare construction practices.

18.4 Except as otherwise provided in this Agreement, the Construction Manager agrees not to divulge, furnish, or make available to any third parties, firm, or organization, without the Owner’s prior written consent, or unless instant to the proper performance of Construction Manager’s obligations hereunder, or in the course of any judicial or legislative proceedings where such information has been properly subpoenaed, any information concerning services to be rendered by Construction Manager or any of its subcontractors to this Agreement.

18.5 In the event Construction Manager should be deemed subject to the disclosure requirements of 42 U.S.C. 1395X(v)(1)(1), or amendments thereto until the expiration of four (4) years following the completion of furnishing services under this Agreement upon written request of Owner, Construction Manager shall make available to the Secretary of the Department of Health and Human Services, or the Controller General, or any duly authorized representatives thereof, a copy of the Agreement and such books, documents and records of Construction Manager that are necessary to certify the nature and extent of any costs incurred by Owner. If Construction Manager carries out any of the duties of this Agreement
through a subcontract, having a contract price of $10,000.00 or more over a twelve (12) month period, with an organization that would be a related organization within the meaning of 42 C.F.R. 405.427, or amendments thereto, such subcontract shall contain a clause to the effect that for a period of four (4) years following the completion of the subcontract, the subcontractor, upon the written request of Owner, shall make available to the Secretary, or to the Controller General, or any of their duly authorized representatives, the subcontract, and books, documents and all other records of the subcontractor that are necessary to verify the nature and extent of such costs.

18.6 Construction Manager represents and warrants to Owner and Owner’s affiliates that Construction Manager (and each person or entity providing services or work under this Agreement on behalf of Construction Manager): (i) is not currently excluded, debarred or otherwise ineligible to participate in the Federal health care programs as defined in 42 U.S.A.§1320a-7b(f) (the “Federal Health Care Programs”); (ii) is not convicted of a criminal offense related to the provisions of healthcare items or services but has not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal Health Care Program; and (iii) is not under investigation or otherwise aware of any circumstances which may result in Construction Manager (or any subcontractor, person or entity providing services on behalf of Construction Manager hereunder) being excluded from participation in the Federal Health Care Programs. This shall be an ongoing representation and warranty during the term of this Agreement and Construction Manager shall immediately notify Owner of any change in the status of the representation and warranty set forth in this section. As a condition precedent to the Construction Manager’s right to progress and other payments under this Agreement, Construction Manager shall submit a statement, in writing, and in such form as approved by the Owner, of the above. Any breach of this section shall give Owner the right to terminate this Agreement immediately for cause, which right shall be in addition to any other rights and remedies available to Owner for such breach under the Agreement or otherwise. Construction Manager agrees to indemnify and hold Owner harmless from any liability incurred by Owner to the extent that Construction Manager’s representation and warranty is not accurate.

18.7 Construction Manager hereby represents and warrants to Owner that neither it nor any of its subcontractors, as of the date of the making of their respective subcontracts, have been excluded from participation in
Federal Healthcare Programs or in any Federal procurement or non-procurement program. Construction Manager further represents and warrants that none of its employees, or the employees of subcontractors, have been convicted of a criminal offense related to the provision of healthcare items or services and has not been reinstated in a Federal Healthcare Program after a period of exclusion, suspension, debarment, or ineligibility. Construction Manager acknowledges that Owner maintains an ongoing policy of screening for exclusion from Federal Healthcare Program participation by referencing the List of Excluded Individuals Entities (LEIE), Excluded Parties Listing System (EPLS) and other applicable tools and further acknowledges receiving a copy of that policy. Construction Manager agrees to implement as part of its basic services a similar compliance monitoring program with respect to all individuals and entities it employs or otherwise uses on the Project. The Construction Manager shall provide in each and every one of its subcontracts that the exclusion from participation in Federal Healthcare Programs or in any Federal procurement or non-procurement program is cause for termination of the subcontract. If the Construction Manager discovers, after the making of the subcontract, that a subcontractor has been excluded from participating in Federal Healthcare Programs or in any Federal procurement or non-procurement program, the Construction Manager shall immediately terminate the debarred subcontractor for cause. Construction Manager shall maintain all documentation evidencing compliance with the screening requirements set forth in this paragraph for a minimum period of seven (7) years or longer if required by law. Upon Owner’s request, Construction Manager will promptly make all such information available to Owner for audit, accreditation and investigation purposes.

18.8 Business Ethics. Construction Manager agrees to maintain business ethics meeting the Owner’s business ethics expectations. The Owner’s business ethics expectations are more particularly described in Exhibit “B” attached hereto and incorporated herein by reference.

18.9 The Owner will consider the employment by the Construction Manager of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act. Such violation shall be cause for unilateral cancellation of this Agreement.

18.10 Any and all drawings, specifications, designs, models, photographs, reports, surveys or other data and documents submitted, provided or
created by the Construction Manager in connection with this Agreement are and will remain the property of the Owner, whether the Project for which they are made is completed or not. All documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Construction Manager, whether finished or unfinished, will become the property of the Owner and must be delivered by the Construction Manager to the Owner within seven (7) days of the date that this Agreement is terminated by either party; but not later than the date of the final payment request for this Project. Any compensation due to the Construction Manager will be withheld until all documents are received as provided herein. This applies to all Contract Documents and Construction Documents produced for the Project.

18.11 The Construction Manager shall afford the Owner and its authorized designees access to the Project site at all times.

18.12

18.13


19.1 Non-Discrimination. The Construction Manager shall not discriminate against employees or subcontractors because of race, color, religion, sex, age, national origin, or ancestry. The Construction Manager shall insure that employees and subcontractors are retained and utilized on the Project without regard to the race, color, religion, sex, age, national origin, or ancestry.

19.2 Disadvantaged Business Enterprise Participation. The Owner encourages the Construction Manager to use subcontractors who are certified as disadvantaged business enterprises as defined in Section 288.703, Florida Statutes (“DBE”) so as to promote opportunities for disadvantaged business enterprises to participate in the Project. The Construction Manager, when seeking subcontractors for the Project, agrees to use its best efforts to insure the participation of local DBE.

19.3 Local Business Enterprises. The Owner encourages the Construction Manager to utilize business enterprises based in Lee County, Florida. The Construction Manager, when seeking subcontractors, agrees to use its best efforts to assure the participation of business enterprises based
in Lee County, Florida.

20. **Miscellaneous.**

20.1 No modification, waiver, amendment, discharge or any change of this Agreement or any Work Orders issued pursuant to this Agreement shall be valid unless the same are in writing, signed by the parties against whom the enforcement of such modification, waiver, amendment, charge or change is sought. This Agreement, the Work Orders issued pursuant to this Agreement, any plans and specifications referred to in said Work Orders and any documents attached hereto constitute the entire agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged herein.

20.2 This Agreement shall be construed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute a single instrument.

20.3 All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the persons or entity may require.

20.4 If any provision or any portion of any provision of this Agreement or the application of any provision or portion thereof to any person or circumstance shall be held invalid or unenforceable, the remaining portion of such provision and the remaining provisions of this Agreement, or the application of such provision held invalid, or unenforceable to persons or circumstances other than those to which it has been held invalid or unenforceable, shall not be affected thereby.

20.5 In the event of any dispute as to the precise meaning of any term contained herein, the rules of contract construction and interpretation that written contracts be construed against the drafter shall not apply.

20.6 All articles, titles, or captions contained in this Agreement are for convenience only and shall not be deemed a part of this Agreement and shall not affect the meaning or interpretation of this Agreement.

20.7 All notices, demands, or other communications made pursuant to this Agreement shall be in writing and copies thereof shall be
simultaneously directed to the parties listed below. Further, all notices, demands, or communications shall be deemed to have been duly given by mailing, unless otherwise specified, by United States registered or certified mail, return receipt requested, with the proper postage prepaid at the following addresses:

If to Owner: Dave Kistel  
Vice President  
Facilities and Support  
Lee Memorial Health System  
636 Del Prado Boulevard  
Cape Coral, FL 33990

With a copy to: Teri Isacson, Esq.  
Legal Services and Risk Management  
Lee Memorial Health System  
2776 Cleveland Ave.  
Fort Myers, FL 33901

If to Construction Manager: ______________________________  
____________________________  
____________________________

Or to such other addresses or to such other persons as any party may designate to the other for purposes set forth above.

20.8 **Assignment.** This Agreement shall not be assignable to either party.

20.9 **Statutory Notice.** ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered as of the day and year first above written.

Signed, sealed, and delivered in the presence of:
Owner:
LEE MEMORIAL HEALTH SYSTEM

By: ____________________________
Stephen R. Brown, M.D.
Chairman of the Board of Directors

CONSTRUCTION MANAGER:

By: ____________________________
Printed Name: ____________________________
Title: ____________________________

Witness Signature
Print Name: ____________________________

Witness Signature
Print Name: ____________________________

Witness Signature
Print Name: ____________________________
**DATE:** May 30, 2019

**LEGAL SERVICE REVIEW?** YES_x_ NO__

**SUBJECT:** 3 Year Continuing Services Contract for Construction Management for Outpatient Facilities

**REQUESTOR & TITLE:** David Cato – Chief Administrative Officer of Outpatient Services

**PREVIOUS BOARD ACTION ON THIS ITEM (IF ANY)**

*(justification and/or background for recommendations – internal groups which support the recommendation)*

On June 23, 2016, Lee Health Board of Directors authorized Lee Health administration to negotiate a Three (3) Year Continuing Services Contract for Construction Management for Outpatient Services per Board Policy. The Three (3) Year Continuing Services Contract was subsequently executed. The proposed agreement, attached hereto, is the same form that was approved by this Board in 2016.

**SPECIFIC PROPOSED MOTIONS:**

**First Motion:** to accept the Certification & Selection Committee’s Rankings for the 3-Year Construction Management Continuing Services Contract for Outpatient Facilities as determined on May 16, 2019.

**Second Motion:** to authorize Lee Health administration to Proceed with contract negotiations for a Three (3) Year Continuing Services Contract for Construction Management for Outpatient Facilities, per Board Policy 20.15 D and the Consultants Competitive Negotiation Act, starting with the highest numerically ranked firm, Stevens Construction and, if such negotiations are not successful to authorize the Lee Health Administration to then negotiate with the next ranked firm.

**Third Motion:** Upon successful negotiation in accordance with Board Policy 20.15 D, authorize the President & Chief Executive Officer or Board Chairman to execute a Three (3) Year Continuing Services Contract for Outpatient Facilities, in substantially the same form as the attached draft contract, subject to final legal review.

**FINANCIAL IMPLICATIONS**

Budgeted Account _x___ Non-Budgeted ____

*(Annual Project Budget and Total Project Budget)*

The 3-year Continuing Services Contract for Outpatient Facilities will be utilized for projects that are either currently funded or will be funded in the future through capital and contingency funds as approved by Lee Health and the Board of Directors. The continuing services contracts are for individual construction projects not exceeding 2 million dollars.

**STAFFING & OPERATIONAL IMPLICATIONS**

None.

**PURPOSE/REASON FOR RECOMMENDATION**

Selection of Construction Management Firms for Outpatient Facilities allows Lee Health to move forward on smaller projects without delays, in a cost effective and time efficient manner.

**SUMMARY**

*(including alternatives considered, Pros and Cons)*

The Certification & Selection Committee ranked firms based upon their qualifications for 3-year Continuing Services Contracts for Outpatient Facilities per Board Policy. Stevens Construction was highest ranked firm for Outpatient Facilities. The Board is being asked to approve Lee Health administration to proceed with contract negotiations and execution of the contract pursuant to Board Policy 20.15 D.
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CONTINUING SERVICES AGREEMENT
CONSTRUCTION MANAGEMENT SERVICES AT RISK
OUTPATIENT SERVICES

THIS AGREEMENT is made and entered into as of the _____ day of _______________, 2019, by and between Lee Memorial Health System d/b/a Lee Health, a special purpose unit of local government (“Owner”) and __________________________ (“Construction Manager”).

RECITALS:

WHEREAS, Owner is a special unit of local of local government engaged in the delivery of health care services to the residents of Lee County, Florida; and

WHEREAS, Construction Manager is a construction manager engaged in the delivery of construction management services to the residents of Southwest Florida; and

WHEREAS, in the course of fulfilling its legislative purpose, Owner periodically utilizes construction management services relating to the construction and remodeling of outpatient healthcare projects including, but not limited to, outpatient medical projects requiring Agency for Health Care Administration (“AHCA”) submission, compliance and inspection (referred to as “Outpatient Project”); and

WHEREAS, the Owner and Construction Manager desire to enter into a Continuing Services Agreement for Construction Management Services at Risk relating to Outpatient Projects undertaken by Owner over the next three (3) years in which the construction costs of each individual Outpatient Project does not exceed Two Million and No/100 Dollars ($2,000,000.00); and

WHEREAS, the specific scope of services to be performed by Construction Manager for each individual Outpatient Project (“Project”) shall be defined in work orders (“Work Order[s]”) which are issued pursuant to the terms of this Agreement. A sample copy of the Work orders to be issued under this Agreement is attached hereto as Exhibit “A”.

OPERATIVE PROVISIONS:

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner and Construction
Manager, intending to be legally bound, agree as follows:

1. **Recitals.** The recitals set forth above are true and correct and are incorporated herein in their entirety.

2. **Term.** This Agreement shall be for a term of three (3) years. The contract period shall commence on ______________ and shall terminate on ______________.

3. **Construction Manager’s Services.**

   3.1 **Scope of Services.** The specific scope of services to be performed by the Construction Manager in connection with any Outpatient Project performed under the provisions of this Agreement shall be described in detail in the Work Order issued for the Outpatient Project (“Work”). The form of the Work Order to be used is attached hereto as Exhibit “A”.

   3.2 **Basic Services.** The basic services to be performed by the Construction Manager in connection with any Work Order issued under the terms of this Agreement shall consist of the following services:

      3.2.1 Construction Manager shall provide competent supervision of all phases of the Work.

      3.2.2 Construction Manager shall cause the Work to be performed in accordance with the applicable drawings and specifications and all things indicated thereon or implied therefrom.

      3.2.3 Prior to the commencement of any construction under a Work Order, Construction Manager shall prepare and submit for Owner’s approval a Project Schedule which shall indicate the dates for starting and completion of the various stages of construction.

      3.2.4 Construction Manager shall provide scheduling and periodic updating on a monthly basis in the interest of completing the Work in the most expeditious and economical manner (“Progress Schedules”).

      3.2.5 Before performing any Work contemplated in a Work Order, Construction Manager shall carefully study and compare the
various drawings, specifications and other contract documents relevant to the Work, take field measurements of existing conditions related to the Work, observe any conditions at the project and promptly report to the Owner and Architect any errors, omissions or inconsistencies discovered by Construction Manager.

3.2.6 Construction Manager shall supervise and direct the Work, using the Construction Manager’s best skill and attention

3.2.7 Construction Manager shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work called for under a Work Order.

3.2.8 Construction Manager shall be fully and solely responsible for job site safety.

3.2.9 Construction Manager shall be responsible for the acts and omissions of Construction Manager’s employees, subcontractors and their agents and employees and any other persons or entities performing portions of the Work for or on behalf of Construction Manager or any of its subcontractors.

3.2.10 Unless otherwise provide in the Work Order, Construction Manager shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.2.11 Construction Manager shall enforce strict discipline and good order among the Construction Manager’s employees and other persons carrying out the Work Order. Construction Manager shall not permit the employment of unfit persons or persons not skilled in tasks assigned to them.

3.2.12 Construction Manager shall deliver, handle, store, and install materials in accordance with manufacturer’s instructions.

3.2.13 Construction Manager shall review for compliance with the
specifications and contract drawings, approve in writing and submit to the Architect shop drawings, product data, samples and similar submittals required by the specifications with reasonable promptness.

3.2.14 Construction Manager shall perform all work in accordance with approved submittals.

3.2.15 Construction Manager shall confine its operations at the project site to areas permitted by law, ordinances, permits, specifications and construction drawings and shall not unreasonable encumber the project site with materials or equipment.

3.2.16 Construction Manager shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

3.2.17 Construction Manager shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

3.2.18 Construction Manager shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under this Agreement. At the completion of the Work, Construction Manager shall remove from and about the Project waste materials, rubbish and Construction Manager’s tools, construction equipment, machinery and surplus material.


4.1 From time to time, Owner may authorize changes in Work Orders issued pursuant to this Agreement, issue additional instructions, require additional Work, or direct the omission of Work previously ordered; provided, however, that Construction Manager shall not proceed with any change involving an increase or decrease in cost or extension of the substantial completion date without the prior written authorization of Owner in accordance with the procedures set forth herein.

4.2 Owner shall order changes in the Work by giving Construction Manager a written change order request (“Change Order Request”) setting forth in detail the nature of the requested change. Upon receipt of a Change Order Request, Construction Manager shall furnish to Owner a statement
setting forth in detail, with a suitable breakdown by trades and work classifications, Construction Manager's estimate of the changes in the Guaranteed Maximum Price attributable to the changes set forth in such Change Order Request and a proposed adjustment to the substantial completion date resulting from such Change Order Request. If Owner approves in writing the estimate of Construction Manager, such Change Order Request and such estimate shall constitute a change in the Guaranteed Maximum Price and the substantial completion date shall be adjusted as set forth in such estimate. The foregoing procedure shall apply to both additive and deductive change orders. Agreement on any change orders shall constitute a final settlement on all items covered therein, subject to performance thereof and payment therefore pursuant to the terms of this Agreement. Construction Manager agrees to perform all change order Work on the basis of reimbursement to it of the cost of the Work plus the overhead and profit percentages specified herein.

4.3 It is understood and agreed that refinement and detailing will be accomplished from time to time with respect to the drawings and specifications set forth in any Work Orders issued pursuant to this Agreement. No adjustment in the Guaranteed Maximum Sum or the substantial completion date set forth in Work Orders shall be made unless such refinement or detailing results in changes in scope, quality, function and/or intent of the drawings and specifications not reasonably inferable or anticipatable by a Construction Manager of Construction Manager's expertise and experience.

5. Owner's Responsibilities. For each Project constructed under the terms of this Agreement, Owner shall provide Construction Manager with the following information:

5.1 Owner shall designate a representative authorized to act on Owner's behalf with respect to the Project described in the Work Order. Owner or such authorized representative shall render decisions in a timely manner pertaining to issues submitted by Construction Manager in order to avoid unreasonable delay in the orderly and sequential progress of Construction Manager's services.

5.2 Except for the permits and fees which are the responsibility of Construction Manager, under this Agreement, Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or
for permanent changes in existing facilities.

5.3 Owner shall furnish the services of architects, engineers and other professional consultants when such services are reasonably required by the scope of the Project.

5.4 Owner shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or this Agreement.

6. **Contract Price.**

6.1 Compensation. In full consideration for the performance of any Work Orders issued pursuant to this contract, Owner shall pay to Construction Manager the contract sum which shall consist of (1) the Cost of the Work; and (2) a profit and overhead component of ____ percent (___%) of the Cost of the Work (“Contract Sum”). Notwithstanding the foregoing, in no event shall the Contract Sum exceed the guaranteed maximum price established for each Work Order (“Guaranteed Maximum Price”). Owner shall not be obligated to Construction Manager for any sums in excess of the Guaranteed Maximum Price established for each Work Order.

6.2 The Cost of the Work. For purposes of this Agreement the phrase, “Cost of the Work” shall consist of the following items:

6.2.1 wages of hourly workers employed by Construction Manager to perform any work called for under a Work Order;

6.2.2 cost of all materials, supplies and equipment incorporated or to be incorporated in any Project described in a Work Order issued pursuant to this Agreement, including the cost of transportation and storage thereof.

6.2.3 payments due to subcontractors from the Construction Manager or made by the Construction Manager to subcontractors for their work performed pursuant to any Work Order issued under this Agreement;

6.2.4 rental charges for all temporary facilities, necessary machinery and
equipment, exclusive of hand tools used at the site of any Project described in any Work Order issued pursuant to this Agreement, whether rented from Construction Manager or any third party, equipment supplier, including installation, repairs and replacements, dismantling, removal, cost of lubrication, transportation and delivery costs thereof, which are used in the support of a subcontractor or Construction Manager's own forces in the performance of any Work called for under a Work Order issued pursuant to this Agreement, at rental charges consistent with those prevailing in the area. Automobiles and trucks shall only be rented and/or leased with the Owner's prior written consent and approval;

6.2.5 the cost of premiums for all insurance and bonds which Construction Manager is required to procure by this Agreement for any Projects described in Work Orders issued pursuant to the terms of this Agreement;

6.2.6 sales, use, gross receipts, or similar taxes related to expenses allowable as part of the Cost of the Work imposed by any governmental authority, and for which Construction Manager is liable;

6.2.7 expenses associated with telephone service, heat, light, power, water, sanitary facilities, weather protection and elevator services at the Project;

6.2.8 costs for trash and debris control and removal from the Project;

6.2.9 costs incurred due to an emergency affecting the safety of persons and property at the Project;

6.2.10 costs for watchmen and security services for the Project;

6.2.11 costs for efficient logistical control of the Project, including horizontal and vertical transportation of materials and personnel;

6.2.12 wages and salaries of Construction Manager's supervisory personnel when stationed at the Project described in a Work Order but only with Owner's written approval and only for that portion of their time devoted to performing the Work described in the Work Order; and
6.2.13 any and all permits specifically required for the performance of any Work described in a Work Order issued pursuant to this Agreement.

6.3 The Cost of the Work shall not include the following:

6.3.1 Any costs or expenses made necessary to correct defective workmanship or to correct any Work not in conformance with any plans or specifications described in the Work Order or to correct any deficiency or damage caused by the negligent acts of Construction Manager or any other party for whom it is responsible including, but not limited to, its subcontractors and suppliers;

6.3.2 general operating expenses of Construction Manager's principal and branch offices other than the field office located at the Project identified in any Work Order issued pursuant to this Agreement;

6.3.3 any part of Construction Manager's capital expenses, including interest on Construction Manager's capital employed for the Project;

6.3.4 overhead and general expenses of any kind except as may be expressly allowed in paragraph 6.1 of this Agreement;

6.3.5 any cost in excess of the guaranteed maximum price;

6.3.6 minor expenses, such as telegrams, telephone service, data processing costs, courier services, photocopies, reproductions and similar “petty cash” items; and

6.3.7 the cost of hand tools, such as shovels, hammers and the cost of expendable items, such as bits, brooms, brushes, ropes and hard hats.

7. Payment.

7.1 Progress Payments.

7.1.1 Construction Manager shall submit to the Owner monthly applications for payment in a form satisfactory to Owner (“Application for Payment”). Each Application for Payment shall
contain an itemization of all payments made to subcontractors, material suppliers and all other matters which represent a portion of the Cost of the Work as well as that portion of Construction Manager's overhead and profit attributable to the Cost of the Work reflected in each Application for Payment.

7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. No more than one (1) Application for Payment shall be submitted to the Owner during any month.

7.1.3 Owner shall make payment to Construction Manager not later than thirty (30) days after the Owner receives the Application for Payment.

7.1.4 As an express condition precedent to the making of any progress payments, Construction Manager shall furnish to Owner the following items:

7.1.4.1 A sworn Application for Payment. In each such Application for Payment, Construction Manager shall certify that it has completed all of the Work to be performed so as to entitle it to the progress payment for which it is applying. Construction Manager shall further certify in its Application for Payment that all such work has been performed in accordance with the applicable building codes and the plans and specifications described in the Work Order and that Construction Manager knows of no deviations or defects relating to the Work performed by it. Furthermore, Construction Manager shall certify in the Application for Payment as follows: “That as of the date of this Application for Payment, all due and payable bills with respect to the Project described in the Work Order to which this Application for Payment relates have been paid to date.”

7.1.4.2 A consent of surety from the surety issuing the Public Construction Bond furnished by Construction Manager in connection with the Work Order;

7.1.4.3 A partial lien waiver for the period of time covered by the Application for Payment complying with the provisions
of Section 713.20, Florida Statutes.

7.1.4.4 Such other forms and documents as Owner, in its sole discretion may require in order to assure an effective waiver of construction lien rights and/or bond claims of any nature whatsoever.

7.1.5 Construction Manager agrees that ten percent (10%) of the amount due under each Application for Payment shall be retained by Owner until final payment is made. The amount of any retainage shall be included in Construction Manager's Application for Payment for the purpose of indicating the value of the Work performed, however, Construction Manager shall not request payment therefore from Owner until such retainage is actually due and payable.

7.2 Final Payment. The provision of the following documents shall constitute an express condition precedent to Owner's obligation to make final payment, including retainage amounts, hereunder:

7.2.1 A sworn final Application for Payment;

7.2.2 A final Contractor's Affidavit attesting to the fact that the Construction Manager has fully completed all Work to be performed under the Work Order and that all individuals, firms, or corporations furnishing material, labor, or services instant to the completion of construction and Work under the Work Order have been paid in full;

7.2.3 A final Contractor's Waiver acknowledging receipt of final payment and providing that said final payment constitutes a full release and discharge by Construction Manager to Owner of all claims and liens of Construction Manager against Owner arising out of, connected with, or resulting from performance of the Work Order.

7.2.4 Notebooks containing all warranties required under the project specifications and plans described in the Work Order as well as all warranties relating to equipment supplied by Construction Manager; and

7.2.5 A clean set of “As Built Documents”.
7.3 The payment of any Application for Payment by Owner, including the final application, does not constitute approval of or acceptance of that part of the Work to which such payment relates nor does it relieve Construction Manager of any of its obligations hereunder nor shall such payment constitute a waiver of any claims which Owner may then have or thereafter discover.

7.4 Notwithstanding any provisions hereof to the contrary, Owner shall not be obligated to make payment to Construction Manager hereunder if any one (1) or more of the following conditions exist:

7.4.1 Construction Manager is in default of any of its obligations hereunder;

7.4.2 Any part of such payment is attributable to Work which is defective or not performed in accordance with the requirements of this Agreement; provided, however, such payment shall be made as to the part thereof attributable to the Work which is performed in accordance with such requirements and is not defective;

7.4.3 Construction Manager has failed to make payments promptly to Construction Manager's subcontractors or for material or labor used in the Work for which Owner has made payment to Construction Manager;

7.5 If Owner, in good faith, determines that the portion of the Guaranteed Maximum Price then remaining unpaid will not be sufficient to properly complete the Work contemplated in the Work Order, whereupon no additional payments will be due Construction Manager hereunder unless and until Construction Manager, at its sole cost, performs a sufficient portion of the Work so that the portion of the Guaranteed Maximum Price then remaining unpaid is determined by the Owner to be sufficient to complete the Work; or if Owner, in good faith, determines that Construction Manager has not or will not with prompt acceleration of the Work, meet the substantial completion date specified in the Work Order.

7.6 In the event-of-a bona fide dispute by Owner-of any sums for which payment has been requested, no interest shall be due on such disputed sums until such dispute is resolved, provided that all undisputed sums shall have been paid in due course.
7.7 Owner reserves the right to issue joint checks to Construction Manager and its subcontractors or materialmen, or, to make payments to Construction Manager's subcontractors or materialmen, if, in Owner's sole judgment, it is necessary to do so in order to ensure payment to the aforesaid parties. The amount of said joint or direct checks shall be deducted from the Contract Sum.

7.8 The acceptance of final payment shall constitute a waiver of all claims by Construction Manager except those previously made in writing 'and identified by the Construction Manager as unsettled at the time of the final Application for Payment.

7.9 Florida Prompt Payment Act. Notwithstanding anything contained herein to the contrary, the Construction Manager agrees and acknowledges that the limited portion of the Florida Prompt Payment Act, as set forth in Section 218.735(6), Florida Statutes pertaining to “timely payment for purchases of construction services” is incorporated by reference into this Agreement with respect to the Construction Manager’s obligation to pay subcontractors. Consistent with Section 218.735(6), Florida Statutes, when the Construction Manager receives payment for labor, services or materials furnished by any subcontractor or supplier hired by the Construction Manager, the Construction Manager must remit payment due to those subcontractors and suppliers within fifteen (15) days after the Construction Manager’s receipt of payment. The Construction Manager will flow this requirement to its sub-subcontractors such that when a subcontractor receives payment from the Construction Manager for labor, services or materials furnished by sub-subcontractors or suppliers hired by the subcontractor, the subcontractor will remit payment due to those subcontractors and suppliers within fifteen (15) days after the subcontractor’s receipt of payment.

8. **Setoff and Recoupment.** Payment for goods, work or services to be performed under this Agreement shall be subject to setoff or recoupment for any present or future claim which Owner may have against Construction Manager in connection with this Agreement, any Work Orders issued under this Agreement or any other agreements existing between the parties.

9. **Insurance.** Construction Manager shall, with respect to each Work Order issued pursuant to this Agreement, provide and maintain, and require all of
its subcontractors to do the same, the following types of insurance protecting the interests of Owner and Construction Manager with limits of liability not less than those set forth below or as otherwise may be required by the specifications described in any Work Order, whichever limits are greater:

9.1 **Worker's Compensation Insurance.** Construction Manager shall maintain worker's compensation insurance, insuring its liability under the Worker's Compensation and Occupational and Disease Laws of the State of Florida, with limits of liability not less than the minimum limits required by Florida law. The worker's compensation policy provided by Construction Manager must be endorsed with a waiver of subrogation endorsement, waiving Construction Manager's right of subrogation against Owner and any architect or engineer utilized by Owner.

9.2 **Comprehensive General Liability Insurance.** Comprehensive general liability insurance which shall include coverage on an “occurrence” basis for the hazards of:

9.2.1 Premises-operation;

9.2.2 Explosion, collapse and underground property damage;

9.2.3 Mold;

9.2.4 Elevators and escalators;

9.2.5 Independent contractors;

9.2.6 Products and completed operations, including coverage for explosion, collapse and underground hazards (with completed operations coverage to remain in force for two (2) years following the date of the acceptance of the Work by Owner);

9.2.7 Contractual liability;

9.2.8 Personal injury liability for all groups of offenses with the exclusion pertaining to employment removed; and

9.2.9 Incidental malpractice coverage.

Such comprehensive general liability insurance must be endorsed with
a broad form property damage endorsement (including completed operations). Owner shall be named as an additional named insured on the comprehensive general liability policy. The limits of liability associated with the Construction Manager’s general liability policy shall not be less than the following:

$1,000,000.00 each occurrence;

$2,000,000.00 aggregate.

Notwithstanding anything contained herein to the contrary, the coverages under the comprehensive general liability policy to be furnished by the Construction Manager must be afforded on a policy form no more restrictive than the last edition of the comprehensive general liability policy filed by the Insurance Service Office, Inc.

9.3 **Excess Liability Policy.** Construction Manager shall maintain an umbrella (excess) liability insurance policy in an amount not less than $1,000,000.00 combined single limit bodily injury/property damage, in excess of the comprehensive general liability insurance described above.

9.4 **Automobile Liability Insurance.** Construction Manager shall maintain automobile liability insurance covering all owned, non-owned and hired vehicles used in connection with the Work to be provided hereunder with a combined minimum limit of $1,000,000.00 single limit for bodily injury and property damage liability each person/each aggregate.

9.5 **Fire Insurance.** It is Construction Manager’s responsibility to carry its own fire insurance on all items, including equipment that will not become an integral part of the project described in any Work Order issued pursuant to this Agreement.

9.6 **Builder's Risk Insurance.** Construction Manager shall procure builder's risk insurance covering Construction Manager and Owner at the site from loss or damage caused by or from risk of direct physical damage or loss. Construction Manager's builder's risk policy shall have minimum limits of $1,000,000.00.

9.7 **Public Construction Bond.** In the event the Guaranteed Maximum Price
associated with a Work Order is in excess of Two Hundred Thousand and No/100 Dollars ($200,000.00), Construction Manager shall furnish a public construction bond in an amount equal to one hundred percent (100%) of the Guaranteed Maximum Price associated with any Work Order issued pursuant to this Agreement. The public construction bond to be issued by Construction Manager shall be in a form acceptable to Owner issued by a surety satisfactory to the Owner and shall name the Owner as an obligee. The public construction bond to be provided by Construction Manager shall comply with the provisions of Section 255.05, Florida Statutes. In such an event, the cost of the Public Construction Bond shall be added to the Contract Sum.

9.8 Insurance Certificate. Prior to performing any services with respect to a Work Order, Construction Manager shall file with Owner a certificate of insurance in a form acceptable to Owner. The certificate of insurance shall reflect Owner as an additional insured on Construction Manager's comprehensive general liability policy, automobile liability policy, worker's compensation policy and excess liability policy. The certificate of insurance furnished by Construction Manager shall contain a provision that the coverages afforded under the policies described thereon will not be cancelled until at least thirty (30) days' prior written notice has been given to Owner.

9.9 Rating Insurance Companies. All insurance companies issuing the policies provided for herein shall be licensed and approved by the Department of Insurance, State of Florida and shall have a financial rating no lower than II and a policy holder's surplus rating no lower than (A) as listed in the most current edition of A.M. Best TK Rating Guide. Companies with ratings lower than those specified herein shall only be acceptable upon the written consent of Owner.

9.10 Extent of Coverages. The insurance coverages referred to above are set forth in full in their respective policy forms, and the foregoing descriptions of such policies are not intended to be complete or to alter or amend any provision of the actual policies and should said descriptions conflict with the actual policies of insurance, the provisions of the policies of insurance shall govern.

9.11 Failure to Secure Insurance. If Construction Manager does not provide the insurance coverages required hereunder, Owner may procure such insurance coverages at Construction Manager's expense and deduct
the amount paid for said coverages from any sums owed Construction Manager.

9.12 Waiver of Subrogation. Construction Manager's policies shall be endorsed to provide that the insurers waive their rights of subrogation against Owner and also to provide that the policy provides primary coverage over any other applicable insurance coverages.

10. Safety Standards. Construction Manager agrees to require that all of its employees, subcontractors and other personnel be required to fully comply with and implement all government laws (OSHA) pertaining to safety standards. Construction Manager agrees that any fines, assessments or penalties imposed upon Owner by failure of the Construction Manager, its employees or subcontractors to comply with government standards will be fully charged back and paid for by Construction Manager.

11. Indemnification. In consideration of the first One Hundred and No/100 Dollars ($100.00) to be paid hereunder and to the fullest extent permitted by law, Construction Manager agrees to indemnify, hold harmless, and defend Owner, Owner's agents and their respective agents, servants and employees from and against all claims, costs, expenses or liabilities (including attorneys' fees) attributable to bodily injury, sickness, disease or death or damage to or destruction of property arising out of, or resulting from, the performance of Work by Construction Manager, its subcontractors, their agents, servants or employees but only to the extent caused by the negligent acts or omissions of them. Construction Manager's obligation hereunder shall only be limited to the extent of the monetary limitations set forth herein and shall not be limited by the provisions of any worker's compensation or similar act. Construction Manager's monetary obligation under this indemnification provision is specifically limited to the sum of One Million and No/100 Dollars ($1,000,000.00). The parties hereby agree that the foregoing monetary limitation bears a reasonable commercial relationship to the Agreement. This indemnity provision is intended to comply with Florida laws on indemnity and, specifically, to comply with Section 725.06, Florida Statutes, and is to be interpreted in such a way as to be enforceable.

12. Termination.

12.1 Termination for Cause by Owner.

12.1.1 If Construction Manager shall fail to commence any work called
for under a Work Order or fail to diligently prosecute Work called for under a Work Order to completion in a diligent, efficient, timely, workmanlike, skillful, and careful manner and in accordance with the provisions of any specifications and/or plans identified in the Work Order, fail to use an adequate amount or quality of personnel or equipment to complete such Work without undue delay, fail to perform any of its obligations under this Agreement or any Work Orders issued pursuant to this Agreement, or fail to make prompt payments to its subcontractors, materialmen or laborers, then Owner shall have the right, if Construction Manager shall not cure such default after five (5) days' written notice thereof, to (i) terminate this Agreement or, in the alternative, any Work Orders issued pursuant the terms of this Agreement; (ii) take possession of and use of all or any part of Construction Manager's materials, equipment, supplies, or other property of any kind used by Construction Manager in the performance of Work related to any Work Order and to use such property in the completion of said Work; or (iii) complete any Work Order in a manner it deems desirable including engaging the services of other parties therefore. Any such acts by Owner shall not be deemed a waiver of any other right or remedy of Owner. If, after exercising any such remedy, the cost to Owner of the performance of the balance of any Work associated with a Work Order is in excess of that part of the Contract Sum associated with the Work Order which has not heretofore been paid to Construction Manager hereunder, Construction Manager shall be liable for and shall reimburse the Owner for such excess.

12.1.2 It is recognized that if Construction Manager is adjudged bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of creditors, or if a receiver is appointed on account of Construction Manager's insolvency, such an event could impair or frustrate the Construction Manager's performance of this Agreement and any Work Orders issued under the provisions of this Agreement. Accordingly, it is agreed that upon the occurrence of any such event, Owner shall be entitled to request of Construction Manager or its successor in interest adequate assurance of further performance in
accordance with the terms and conditions hereof. Failure to comply with such a request within ten (10) days from date of delivery of the request shall entitle Owner to terminate this Agreement. In all events, pending receipt of adequate assurance of performance and actual performance in accordance therewith, Owner shall be entitled to proceed with any Work called for under a Work Order with its own forces or with such other contractors on a time and material or other appropriate basis, the cost of which will be back charged against the amount then or thereafter paid or otherwise due Construction Manager.

12.2 Termination for Cause by Construction Manager. If Owner fails to perform any of its obligations hereunder, Construction Manager shall have the right to give Owner a written notice thereof, stating the nature of the default complained of. If Owner does not cure such default or commence the curing of such default within five (5) days after receipt of such notice, Construction Manager shall have the right to terminate this Agreement or any Work Order issued pursuant to this Agreement by giving Owner written notice thereof at any time thereafter while such default remains uncured and payment shall only be made to the Construction Manager for reasonable demobilization costs, the fee earned to the date of the termination and all outstanding costs incurred as of the date of termination. Said payment shall be Construction Manager’s sole damages for Owner’s breach. Construction Manager shall similarly have the right to terminate upon five (5) days’ written notice if any Work to be performed in connection with the Work Order is suspended for a period of sixty (60) days or more from causes not the fault of the Construction Manager.

12.3 Termination for Owner’s Convenience. Owner hereby reserves the right to terminate this Agreement and/or any Work Orders issued under the terms of this Agreement without regard to fault or breach upon written notice to Construction Manager, effective immediately, unless otherwise provided in said notice. In the event of such a termination, Owner shall pay as the sole amount due to Construction Manager (i) all sums due for Work performed to date; and (ii) reasonable costs of demobilization. Such sums shall be due and payable on the same conditions as set forth herein for the final payment. Upon receipt of such payment, the parties hereto shall have no further obligations to each other except the Construction Manager's obligation to perform corrective and/or warranty
work and to indemnify Owner as provided for in this Agreement. It is understood and agreed that no fee or other compensation or payment shall be due or payable for unperformed Work. Construction Manager agrees that each subcontract and purchase order issued by it will reserve for Construction Manager the same right of termination provided for in this paragraph and that Construction Manager further agrees to require that comparable provisions be included in all lower tier subcontracts and purchaser orders.

13. Time of Completion.

13.1 Time. All time limits stated in Work Orders issued pursuant to this Agreement are of the essence of this Agreement. By executing Work Orders issued pursuant to this Agreement, Construction Manager confirms that the contract time specified in a Work Order is a reasonable period for performing the Work contemplated therein.

13.2 Substantial Completion. The date of substantial completion shall be deemed the date on which the permitting authority for the project in question issues a final certificate of occupancy.

13.3 Delay Damages. CONSTRUCTION MANAGER SHALL NOT BE ENTITLED TO RECOVER ANY MONETARY DAMAGES IT MAY SUSTAIN AS A RESULT OF ANY DELAY CAUSED CONSTRUCTION MANAGER BY ANY ACT OF OWNER, ARCHITECT, ANY SEPARATE CONTRACTOR EMPLOYED BY OWNER, OR ANY OTHER CAUSES WHATSOEVER. CONSTRUCTION MANAGER FURTHER AGREES THAT IT WILL ACCEPT IN FULL SATISFACTION FOR SUCH DELAYS ANY EXTENSIONS OF TIME WHICH ARE GRANTED IT BY OWNER.


14.1 Notwithstanding anything contained herein to the contrary, it is understood and agreed between the parties that Owner is not examining any contract documents for accuracy and technical sufficiency, and is not under any obligation to inspect the Project. Furthermore, it is understood and agreed between the parties that neither the review, approval, nor acceptance by Owner of data, surveys, studies, designs, specifications, calculations, plans, drawings, or any other documents furnished hereunder by Construction Manager shall in any way relieve
Construction Manager of responsibility for the adequacy, completeness, and accuracy of its Work, and in no event shall Owner's review, approval, acceptance of or payment for such services be construed to operate as a waiver of any of Owner's rights under this Agreement or of any cause of action it may have, arising out of the performance of this Agreement.

14.2 Construction Manager hereby acknowledges that Owner does not make any representations or warranties to Construction Manager by virtue of the information contained in the request - for proposals or any program descriptions contained therein. Construction Manager further acknowledges that it, alone, is responsible for the accuracy, completeness, and technical sufficiency of all Work performed under this Agreement and that the information contained in Owner's request for proposal and program description does not relieve, release, or in any way whatsoever diminish Construction Manager’s ultimate responsibility for the accuracy, completeness and technical sufficiency of the Project and any Work performed hereunder.

15. **Legal Terms.**

15.1 The terms and provisions of this Agreement and any dispute arising in connection herewith shall be governed by and construed in accordance with Florida Law. The parties agree that all disputes arising under this Agreement shall be resolved by the courts and not by arbitration. The parties further agree that the venue for any legal action brought in connection with this Agreement shall be in Lee County, Florida. In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all costs incurred, including reasonable attorneys' fees.

15.2 Prior to the filing of any litigation by Owner or Construction Manager against the other (and, except as described below, as a precondition to any such filing), Owner and Construction Manager shall engage in presuit non-binding mediation. Such mediation may be requested by either party at any time and shall be conducted the same as if such mediation were ordered by Florida Circuit Court (i.e. in accordance with and subject to, all of the laws and rules applicable to court ordered mediation). Such mediation shall be conducted within a reasonable period of time after the same is requested in writing by either party. If the parties are unable to agree upon the selection of a mediator, either party
may petition or request that the Circuit Court in Lee County, Florida (or the Mediation Coordinator for the Court of Lee County, Florida) appoint a mediator. A mediator who is so appointed may only be challenged for cause, and not preemptorally. While the request for and the conducting of such a mediation may be a precondition to the filing of a civil action, in the event either party is in jeopardy of losing its right to sue (e.g., the statute of limitations is about to expire), then suit may be filed before a mediation is conducted provided that mediation is requested before, or simultaneously with the filing of such suit, and is conducted before the named defendant in the suit is required to respond to the complaint. If the scheduling of the mediation requires, the plaintiff in the suit shall grant the defendant an appropriate extension of time to respond to the complaint so as to permit the mediation to be conducted before the defendant must so respond. The mediation contemplated hereunder shall be conducted, unless otherwise agreed by the parties, in Lee County, Florida. The parties shall bear the mediator's fee and any filing fees associated with the mediation equally.

16. **Non-Exclusive Agreement.** Owner may, in its discretion, issue Work Orders to Construction Manager during the contract period contemplated herein. All such Work Orders shall incorporate by reference the documents referred to in paragraph 17 below. Owner shall not, however, be obligated to issue Work Orders to Construction Manager for all Outpatient Projects it undertakes and expressly reserves the right to utilize other construction managers to perform work of a similar nature should it, in its sole discretion, elect to do so.

17. **Contract Documents.** The “Contract Documents” shall consist of this Agreement, any Work Order issued pursuant to this Agreement, any drawings and specifications referenced in the Work Order and any change orders modifying a Work Order issued pursuant to this Agreement. These documents form the Agreement existing between the parties, and are as fully a part of the Agreement as if attached to this Agreement or repeated herein.

18. **Special Provisions.**

18.1 The Construction Manager warrants that it has not employed or retained any company or person, other than a bonafide employee working solely for Construction Manager, to solicit or secure this Agreement and that it has not paid any person, company, corporation, individual, or firm, other than a bonafide employee working solely for Construction Manager any
fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

18.2 Public Entity Crime Information Statement. Any person or affiliate who has been placed on the Convicted Vendor List following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity, for the construction or repair of a public building, or public work, may not submit bids or leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY 2 for a period of thirty-six (36) months from the date of being placed on the Convicted Vendors List.

18.3 The Construction Manager affirmatively represents to Owner that it shall perform its services under this Agreement in a skillful and competent manner in accordance with good and sound healthcare construction practices.

18.4 Except as otherwise provided in this Agreement, the Construction Manager agrees not to divulge, furnish, or make available to any third parties, firm, or organization, without the Owner’s prior written consent, or unless instant to the proper performance of Construction Manager’s obligations hereunder, or in the course of any judicial or legislative proceedings where such information has been properly subpoenaed, any information concerning services to be rendered by Construction Manager or any of its subcontractors to this Agreement.

18.5 In the event Construction Manager should be deemed subject to the disclosure requirements of 42 U.S.C. 1395X(v)(1)(1), or amendments thereto until the expiration of four (4) years following the completion of furnishing services under this Agreement upon written request of Owner, Construction Manager shall make available to the Secretary of the Department of Health and Human Services, or the Controller General, or any duly authorized representatives thereof, a copy of the Agreement and such books, documents and records of Construction Manager that are necessary to certify the nature and extent of any costs incurred by Owner. If Construction Manager carries out any of the duties of this Agreement through a subcontract, having a contract price of $10,000.00 or more over a twelve (12) month period, with an organization that would be a related
organization within the meaning of 42 C.F.R. 405.427, or amendments thereto, such subcontract shall contain a clause to the effect that for a period of four (4) years following the completion of the subcontract, the subcontractor, upon the written request of Owner, shall make available to the Secretary, or to the Controller General, or any of their duly authorized representatives, the subcontract, and books, documents and all other records of the subcontractor that are necessary to verify the nature and extent of such costs.

18.6 Construction Manager represents and warrants to Owner and Owner’s affiliates that Construction Manager (and each person or entity providing services or work under this Agreement on behalf of Construction Manager): (i) is not currently excluded, debarred or otherwise ineligible to participate in the Federal health care programs as defined in 42 U.S.A.§1320a-7b(f) (the “Federal Health Care Programs”); (ii) is not convicted of a criminal offense related to the provisions of healthcare items or services but has not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal Health Care Program; and (iii) is not under investigation or otherwise aware of any circumstances which may result in Construction Manager (or any subcontractor, person or entity providing services on behalf of Construction Manager hereunder) being excluded from participation in the Federal Health Care Programs. This shall be an ongoing representation and warranty during the term of this Agreement and Construction Manager shall immediately notify Owner of any change in the status of the representation and warranty set forth in this section. As a condition precedent to the Construction Manager’s right to progress and other payments under this Agreement, Construction Manager shall submit a statement, in writing, and in such form as approved by the Owner, of the above. Any breach of this section shall give Owner the right to terminate this Agreement immediately for cause, which right shall be in addition to any other rights and remedies available to Owner for such breach under the Agreement or otherwise. Construction Manager agrees to indemnify and hold Owner harmless from any liability incurred by Owner to the extent that Construction Manager’s representation and warranty is not accurate.

18.7 Construction Manager hereby represents and warrants to Owner that neither it nor any of its subcontractors, as of the date of the making of their respective subcontracts, have been excluded from participation in Federal Healthcare Programs or in any Federal procurement or non-procurement program. Construction Manager further represents and
warrants that none of its employees, or the employees of subcontractors, have been convicted of a criminal offense related to the provision of healthcare items or services and has not been reinstated in a Federal Healthcare Program after a period of exclusion, suspension, debarment, or ineligibility. Construction Manager acknowledges that Owner maintains an ongoing policy of screening for exclusion from Federal Healthcare Program participation by referencing the List of Excluded Individuals Entities (LEIE), Excluded Parties Listing System (EPLS) and other applicable tools and further acknowledges receiving a copy of that policy. Construction Manager agrees to implement as part of its basic services a similar compliance monitoring program with respect to all individuals and entities it employs or otherwise uses on the Project. The Construction Manager shall provide in each and every one of its subcontracts that the exclusion from participation in Federal Healthcare Programs or in any Federal procurement or non-procurement program is cause for termination of the subcontract. If the Construction Manager discovers, after the making of the subcontract, that a subcontractor has been excluded from participating in Federal Healthcare Programs or in any Federal procurement or non-procurement program, the Construction Manager shall immediately terminate the debarred subcontractor for cause. Construction Manager shall maintain all documentation evidencing compliance with the screening requirements set forth in this paragraph for a minimum period of seven (7) years or longer if required by law. Upon Owner’s request, Construction Manager will promptly make all such information available to Owner for audit, accreditation and investigation purposes.

18.8 Business Ethics. Construction Manager agrees to maintain business ethics meeting the Owner’s business ethics expectations. The Owner’s business ethics expectations are more particularly described in Exhibit “B” attached hereto and incorporated herein by reference.

18.9 The Owner will consider the employment by the Construction Manager of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act. Such violation shall be cause for unilateral cancellation of this Agreement.

18.10 Any and all drawings, specifications, designs, models, photographs, reports, surveys or other data and documents submitted, provided or created by the Construction Manager in connection with this Agreement are and will remain the property of the Owner, whether the Project for
which they are made is completed or not. All documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Construction Manager, whether finished or unfinished, will become the property of the Owner and must be delivered by the Construction Manager to the Owner within seven (7) days of the date that this Agreement is terminated by either party; but not later than the date of the final payment request for this Project. Any compensation due to the Construction Manager will be withheld until all documents are received as provided herein. This applies to all Contract Documents and Construction Documents produced for the Project.

18.11 The Construction Manager shall afford the Owner and its authorized designees access to the Project site at all times.

18.12


19.1 Non-Discrimination. The Construction Manager shall not discriminate against employees or subcontractors because of race, color, religion, sex, age, national origin, or ancestry. The Construction Manager shall insure that employees and subcontractors are retained and utilized on the Project without regard to the race, color, religion, sex, age, national origin, or ancestry.

19.2 Disadvantaged Business Enterprise Participation. The Owner encourages the Construction Manager to use subcontractors who are certified as disadvantaged business enterprises as defined in Section 288.703, Florida Statutes (“DBE”) so as to promote opportunities for disadvantaged business enterprises to participate in the Project. The Construction Manager, when seeking subcontractors for the Project, agrees to use its best efforts to insure the participation of local DBE.

19.3 Local Business Enterprises. The Owner encourages the Construction Manager to utilize business enterprises based in Lee County, Florida. The Construction Manager, when seeking subcontractors, agrees to use its best efforts to assure the participation of business enterprises based in Lee County, Florida.

20. Miscellaneous.
20.1 No modification, waiver, amendment, discharge or any change of this Agreement or any Work Orders issued pursuant to this Agreement shall be valid unless the same are in writing, signed by the parties against whom the enforcement of such modification, waiver, amendment, charge or change is sought. This Agreement, the Work Orders issued pursuant to this Agreement, any plans and specifications referred to in said Work Orders and any documents attached hereto constitute the entire agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged herein.

20.2 This Agreement shall be construed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute a single instrument.

20.3 All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the persons or entity may require.

20.4 If any provision or any portion of any provision of this Agreement or the application of any provision or portion thereof to any person or circumstance shall be held invalid or unenforceable, the remaining portion of such provision and the remaining provisions of this Agreement, or the application of such provision held invalid, or unenforceable to persons or circumstances other than those to which it has been held invalid or unenforceable, shall not be affected thereby.

20.5 In the event of any dispute as to the precise meaning of any term contained herein, the rules of contract construction and interpretation that written contracts be construed against the drafter shall not apply.

20.6 All articles, titles, or captions contained in this Agreement are for convenience only and shall not be deemed a part of this Agreement and shall not affect the meaning or interpretation of this Agreement.

20.7 All notices, demands, or other communications made pursuant to this Agreement shall be in writing and copies thereof shall be simultaneously directed to the parties listed below. Further, all notices, demands, or communications shall be deemed to have been duly given by mailing, unless otherwise specified, by United States registered or
certified mail, return receipt requested, with the proper postage prepaid at the following addresses:

If to Owner: David Cato  
Chief Administrative Officer, Outpatient Services  
Medical Plaza One  
9800 S. HealthPark Dr., Suite 200  
Fort Myers, FL 33908

With a copy to: Teri Isacson, Esq.  
Legal Services and Risk Management  
Lee Memorial Health System  
2776 Cleveland Ave.  
Fort Myers, FL 33901

If to Construction Manager: ______________________  
____________________  
____________________

Or to such other addresses or to such other persons as any party may designate to the other for purposes set forth above.

20.8 Assignment. This Agreement shall not be assignable to either party.

20.9 Statutory Notice. ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered as of the day and year first above written.

Signed, sealed, and delivered in the presence of:
Owner:
LEE MEMORIAL HEALTH SYSTEM

By:
Stephen R. Brown, M.D.
Chairman of the Board of Directors

CONSTRUCTION MANAGER:

By:
Printed Name: ____________________________
Title: ____________________________

Witness Signature
Print Name: ____________________________

Witness Signature
Print Name: ____________________________

Witness Signature
Print Name: ____________________________
Budget 2020 Operating Margin Target & Budget Assumptions
(Ben Spence, Chief Financial Officer)
Employee Total Rewards Program 2020

(Approve)
**DATE:** May 22, 2019  
**LEGAL SERVICE REVIEW?** YES ☑ NO ☐

**SUBJECT:** FY 2020 Lee Health Total Rewards Recommendations

**REQUESTOR & TITLE:** Alison Thurau, System Director HR, Total Rewards and Michael Wukitsch, Chief Human Resources Officer

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**PREVIOUS BOARD ACTION ON THIS ITEM (IF ANY)**  
*(justification and/or background for recommendations – internal groups which support the recommendation)*

Annually the LH Board of Directors reviews the fiscal year LH Compensation and Benefits budget approved by senior leadership and presented by Human Resources. Upon review, action is taken to approve a recommended program pending full Board approval of the final budget in September.

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**SPECIFIC PROPOSED MOTION:**

Approval of the FY 2020 LH Compensation Program Recommendations pending the Board of Directors’ final approval of the FY 2020 LH Budget.

Approval of the FY 2020 LH Benefits Program Recommendations pending the Board of Directors’ final approval of the Fiscal Year 2020 LH Budget.

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**FINANCIAL IMPLICATIONS**  
*(Annual Project Budget and Total Project Budget)*

Budgeted Account ☑  Non-Budgeted ☐

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**STAFFING & OPERATIONAL IMPLICATIONS**

*(including FTEs, facility needs, etc.)*

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**PURPOSE/REASON FOR RECOMMENDATION**

To attract and retain LH staff, approval will help LH remain market competitive for both compensation and benefits.

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**SUMMARY**

*(including alternatives considered, Pros and Cons)*

Compensation Budget- $18.8 M  
Benefits: Health Plan Budget - $118 M
**DATE:**  5/22/2019  

**LEGAL SERVICE REVIEW?**  YES_X_  NO__  

**SUBJECT:** License Agreement for parking spaces – Samile Investments, LLC (Licensor) and Lee Memorial Health System (Licensee)  

**REQUESTOR & TITLE:**  Latrice Davis, VP Lee Physician Group, Tammy Powell, LPG System Director Practice Operations  

**PREVIOUS BOARD ACTION ON THIS ITEM (IF ANY)**  
(Justification and/or background for recommendations – internal groups which support the recommendation)  

N/A  

**SPECIFIC PROPOSED MOTION:**  
1. Approve proposed licensing agreement between Samile Investments, LLC (Licensor) and Lee Memorial Health System (Licensee) for 425 SE 47th Terrace, Cape Coral, FL 33904 comprising 31,744 square feet of vacant land to be utilized by Lee Health for parking to support the LPG South Cape practice located at 507 Cape Coral Parkway E, Cape Coral, FL 33904. Cost of License Agreement is $300.00 per month. Term begins on the effective date and may be terminated by either party with 30-days written notification.  
2. Authorize the Lee Health President or Chairman to execute the lease upon final LMHS and/or Board counsel review and revision of the final license agreement document as long as such revisions do not materially modify the specific license agreement terms as set forth above.  

**FINANCIAL IMPLICATIONS**  
Budgeted Account ____  Non-Budgeted _X___  
(Annual Project Budget and Total Project Budget)  

**STAFFING & OPERATIONAL IMPLICATIONS**  
(including FTEs, facility needs, etc.)  

**PURPOSE/REASON FOR RECOMMENDATION**  
Not enough patient parking. Current Parking spaces 45. Staff need 24, This leaves 21 for Patients. Future growth and practice needs such as a Coumadin Clinic and additional nurse visits cannot be initiated as we are limited by the number of spaces available for patient parking.  

**SUMMARY**  
Additional spaces are needed to sustain the current patient parking needs and provide additional services, such as Coumadin Clinic. New providers cannot be considered at this location until the parking challenges are addressed.
LICENSE AGREEMENT

This License Agreement ("Agreement") is effective on May 1, 2019 (the "Effective Date") between Lee Memorial Health System, a Florida public health care system ("Licensee"), and Samile Investments LLC, a Florida limited liability company ("Licensor").

TERMS AND CONDITIONS

1. **Grant of License.** Pursuant to this Agreement, Licensor grants to Licensee, upon terms and conditions that follow, a revocable, non-exclusive license for the use of a parking lot ("Parking Lot") owned by Licensor.

2. **Parking Lot.** The Parking Lot is located outdoors on land with an address of 452 SE 47th Terrace, Cape Coral, FL 33904. The Parking Lot is approximately 31,744 square feet. Licensee accepts the Parking Lot "as-is" and may not change the Parking Lot in any way without Licensor’s prior written approval.

3. **Term.** The term of this Agreement begins on the Effective Date and expires upon the occurrence of any of the following events:

   a. either party’s delivery of a termination in accordance with the applicable provisions of this License;
   
   b. upon Licensor’s ceasing to be the fee simple owner of the Parking Lot;
   
   c. Licensee’s default and Licensor’s election to terminate pursuant to the default provisions contained in this License.

4. **Use.** Licensee shall have access to the entire Parking Lot at all days and times that this Agreement is in effect, in order that employees, patients, contractors, and guests of Licensee may park their vehicles.

5. **Fees.** Licensee shall pay to Licensor a fee of $300.00 per month for the use of the Parking Spaces. The monthly fee will be due on the first of each month during the term of this Agreement and will immediately be deemed late and in default if not received by Licensor when due.

6. **Default.** If Licensee should default in or otherwise fail to perform any of the obligations set forth in this License, including without limitation any applicable rules and regulations established by Licensor from time to time, and fail to cure any such breach or default within twenty four (24) hours after notice from Licensor, then Licensor may, in addition to all other remedies available at law or in equity, revoke this License upon delivery of notice to Licensee. In such event, Licensee shall immediately vacate the Parking Lot in accordance with this License. In the event this Agreement is terminated, Licensee shall not have the right to occupy the Parking Lot. Should Licensee do so after termination, without the express written consent of Licensor, it is agreed that said occupancy shall constitute a trespass and that, in addition to any other remedies available to it, Licensor shall be entitled to seek immediate injunctive relief.
9. **Termination.** Licensor or Licensee may terminate this License for any reason upon giving 30 days’ notice to the other party as provided for in this License. In the event of termination, this License shall immediately become void and the Licensee shall vacate the Parking Lot in accordance with this License.

10. **Notices.** Any notice required or permitted to be delivered pursuant to this Agreement will be in writing and will be deemed delivered: (a) immediately, if delivered in person; (b) in three business days if sent by certified U.S. mail, postage prepaid; or (c) in one business day if sent by a national overnight courier, in each case addressed to the following addresses or such other address as may be specified by either party hereto upon notice given to the other:

   If to Licensor:
   
   Innova Property Management  
   4645 SE 11\(^{th}\) Place, Suite 102  
   Cape Coral, FL 33904

   If to Licensee:
   
   Lee Health Ambulatory Facilities  
   12801 Westlinks Drive, Suite 102  
   Fort Myers, FL 33913

11. **Complete Agreement.** With respect to its subject matter, this Agreement constitutes and expresses the entire agreement of the parties and supersedes all prior agreements and understandings, whether written or oral, between the parties. No change or amendment of any of the terms or provisions hereof will be binding unless in writing and signed by the party against whom the same is sought to be enforced. Neither the failure of either party to exercise any right, power, or remedy provided under this Agreement or to insist upon compliance by any other party with its obligations under this Agreement, nor any custom or practice of the parties at variance with the terms of this Agreement, will constitute a waiver by such party of its right to exercise any such right, power, or remedy or to demand such compliance. The waiver by a party of any breach or violation of any provision of this Agreement will not operate as, or be construed to be, a waiver of any subsequent breach or violation hereof.

12. **Choice of Law & Forum.** This Agreement is governed by and construed in accordance with Florida law, without regard to conflict of laws principles. Each party specifically consents to Florida as the proper jurisdiction for all legal actions arising directly or indirectly from this Agreement and agrees that the state or federal courts located in Lee County, Florida shall be the exclusive forum and venue for any such action.

13. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which will be deemed an original, and all of which together will constitute one and the same instrument, whether by original, electronic, or facsimile signature.

**IN WITNESS WHEREOF,** the parties hereto have executed this Agreement as of the Effective Date.