
MISSION AGREEMENT¹

BY AND AMONG

LEE MEMORIAL HEALTH SYSTEM,
a Florida independent special healthcare district;

LEE HEALTH SYSTEM, INC. d/b/a LEE HEALTH,
a non-governmental Florida not-for-profit corporation;

AND

LEE COUNTY, FLORIDA,
a political subdivision of the State of Florida.

[DATE]

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¹ This document is intended as a draft of proposed terms for discussion purposes only. Terms are subject to further review and consideration by the Board and legal counsel.

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LIST OF EXHIBITS

Exhibit A

Articles of Incorporation of Lee Health

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LIST OF SCHEDULES

Schedule 2.1.1	Transferred Assets and Value of Same
Schedule 2.2.1	Assumed Liabilities and Value of Same
Schedule 3.1.1	Major Service Lines

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MISSION AGREEMENT

This **MISSION AGREEMENT** (the “Agreement”) is made and entered into as of _____ (the “Effective Date”) by and among **LEE MEMORIAL HEALTH SYSTEM**, a Florida independent special healthcare district (the “District”), **LEE HEALTH SYSTEM, INC. d/b/a LEE HEALTH**, a non-governmental Florida not-for-profit corporation (“LH”), and **LEE COUNTY, FLORIDA**, a political subdivision of the State of Florida (the “County”). The District, LH and County are each referred to individually herein as a “Party” and, collectively, as the “Parties.”

RECITALS

WHEREAS, the County is a political subdivision of the State of Florida;

WHEREAS, the Lee County Board of County Commissioners (“County Commission”) serves as the legislative decision-making body of the County;

WHEREAS, the District is an independent special healthcare district operating in Lee County, Florida, pursuant to special act of the Florida Legislature, Chapter 2000-439, Laws of Florida, as amended (the “Special Act”);

WHEREAS, in 1916 the District’s predecessor began operation of a community-focused, non-governmental nonprofit hospital in Lee County, Florida, including the establishment of Lee Memorial Hospital in downtown Fort Myers;

WHEREAS, in 1963 the Florida Legislature authorized the establishment of a public hospital in Lee County by special act, Chapter 63-1552, Laws of Florida;

WHEREAS, in 1968 the District assumed operation of the hospital that began as Lee Memorial Hospital in 1916;

WHEREAS, the District has grown from a single hospital to a vibrant, full-service health system operating as Lee Memorial Health System d/b/a Lee Health (the “Health System”), which is a multi-hospital healthcare system that coordinates the delivery of health care services by its related health care entities in Lee County, Florida (collectively, the “Lee Health Entities”);

WHEREAS, to facilitate the delivery of health care services, the Health System is comprised, in part, of Lee Memorial Hospital, HealthPark Medical Center, Cape Coral Hospital, Gulf Coast Medical Center, and Golisano Children’s Hospital of Southwest Florida (collectively, the “Hospitals”);

WHEREAS, in addition to the Hospitals, the District owns and operates numerous outpatient free standing emergency care, imaging, multi-use health centers, multi-specialty clinics, and urgent care clinics (collectively, the “Free Standing Clinics” and together with the Hospitals, the “Facilities”), and other medical and supporting services offered by or through the Health System;

WHEREAS, the health care industry has changed significantly since the District assumed operation of the Health System in 1968;

WHEREAS, pursuant to the passage of Chapter 2023-326, Laws of Florida (the “Amendment to the Special Act”), the Florida Legislature has recognized that continued operation of the Health System may not be an effective or beneficial governmental function;

WHEREAS, the Amendment to the Special Act authorizes the District to conduct an evaluation of the benefits to the residents of Lee County of converting the District to a non-governmental Florida nonprofit entity, and if it is determined that converting the District to a non-governmental Florida nonprofit entity is in the best interests of Lee County residents, to convert the District (the “Conversion”) to a non-governmental Florida nonprofit entity (a “Nonprofit Operator”), subject to and in accordance with the terms of an agreement to be approved by the District and County;

WHEREAS, the District has determined that the long-term continuation of the high-quality and level of health care services currently rendered by the Health System can best be accomplished through a Conversion of all of the operations, assets and liabilities of the Health System to a Nonprofit Operator, in exchange for certain Covenants (as defined below) to the County as set forth in this Agreement and certain governing documents of such Nonprofit Operator;

WHEREAS, the Amendment to the Special Act requires that this Agreement effecting a Conversion to a Nonprofit Operator provide for the disposition of the District’s assets and liabilities and include an enforceable commitment by the Nonprofit Operator that the programs and services provided by the Health System will continue to be provided to residents of Lee County in perpetuity so long as the Nonprofit Operator is in operation or, if otherwise agreed to, until the Nonprofit Operator has otherwise met all obligations set forth in this Agreement;

WHEREAS, LH has been formed as a non-governmental Florida nonprofit entity for the purpose of being the Nonprofit Operator that will receive or assume all of the District’s assets and liabilities through the Conversion;

WHEREAS, the Parties believe the Conversion will provide greater flexibility in the operation of the Health System and allow LH to obtain additional financial resources which will permit the Health System to continue to operate and grow in a way that provides greater access to health care services for the citizens of its service area, enhancing the provision of high-quality and cost-effective health care, and positioning the Health System to adapt effectively to the changes taking place locally and nationally in the health care delivery and financing systems;

WHEREAS, the Conversion shall be accomplished subject to the terms and conditions set forth in this Agreement, including transfer to or assumption by LH of the assets and liabilities of the District as described herein;

WHEREAS, in accordance with the Amendment to the Special Act, no later than 30 days after the complete transfer to or assumption by LH of all assets and liabilities of the District, the

District shall notify the Florida Department of Economic Opportunity of the Conversion, and upon receipt of such notice by the Florida Department of Economic Opportunity, the District shall be dissolved as a matter of law and cease to exist (the (the “Dissolution”); and

WHEREAS, subject to the foregoing, this Agreement sets forth the terms and conditions of the Conversion as among the District, LH and the County as required by chapter 2023-326, Laws of Florida.

NOW, THEREFORE, for and in consideration of the premises, and the agreements, covenants, representations and warranties hereinafter set forth, and other good and valuable consideration, the Parties agree as follows:

ARTICLE 1

CONVERSION GOALS AND OBJECTIVES

1.1 **Rationale and Vision**. The District and LH (i) share a commitment to the long-term continuation of the high-quality and level of health care services currently rendered by the Health System for its communities, (ii) recognize the importance of enhanced flexibility and the ability to obtain additional financial resources for the successful operation of the Health System, and (iii) believe that the Conversion represents the best path toward achieving the mutual goals set forth in Section 1.2 below.

1.2 **Goals of the Conversion**. The Parties’ core principles for the Conversion are:

1.2.1 Maintaining the Health System’s position as a multi-hospital health system delivering high-quality care to the communities it serves;

1.2.2 Maintaining the historic mission of the Health System to be a trusted partner, empowering healthier lives through care and compassion;

1.2.3 Maintaining the Health System’s status as a safety net provider to the residents of Lee County;

1.2.31.2.4 Implementing clinical, financial, and operational best practices to drive measurable improvements with respect to the Health System’s quality, patient satisfaction and financial results;

1.2.41.2.5 Continuing to provide access to care through strategic deployment of outpatient facilities intended to support the communities served by the Health System;

1.2.51.2.6 Strengthening existing clinical offerings of the Health System;

1.2.61.2.7 Promoting professional and graduate educational efforts;

1.2.71.2.8 Maintaining all appropriate accreditation and all relevant and necessary federal, state, and local licenses and permits;

~~1.2.81.2.9~~ Recruiting and operating a successful physician platform that supports both employed and non-employed physicians; and

~~1.2.91.2.10~~ Continuing to build a positive community awareness and perception of the Health System's services through community outreach.

ARTICLE 2

CONVERSION

2.1 Transfer of Assets.

2.1.1 Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, the District shall contribute, transfer, assign, convey and deliver to LH, and LH shall accept and receive from the District, all of the District's right, title and interest in, to and under, all of the assets of the District of every kind and nature, whether real, personal or mixed, tangible or intangible, subject to all encumbrances, including without limitation the assets listed on Schedule 2.1.1 (the "Transferred Assets").

2.2 Assignment and Assumption of Liabilities.

2.2.1 Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, the District shall assign to LH, and LH shall assume responsibility for and agree to pay, perform and discharge, all of the liabilities, indebtedness, commitments, and other financial or operational obligations of the District then existing as of the Closing Date, whether such liabilities, indebtedness, commitments, or other financial or operational obligations are known or unknown, asserted or unasserted, absolute, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, recorded or unrecorded, due or to become due or otherwise, and regardless of when asserted, including without limitation the obligations listed on Schedule 2.2.1 (the "Assumed Liabilities").

2.3 Closing; Closing Date.

2.3.1 The consummation of the Conversion contemplated by this Agreement (the "Closing") shall take place at such location agreed upon by the District and LH on a date mutually agreed upon by the District and LH (the "Closing Date").

2.4 Closing Document Deliveries.

2.4.1 Within one (1) business day of the Closing, the District shall deliver, or shall cause LH to deliver, the following documents to the County:

(a) A copy of the Articles of Incorporation of LH in the form attached hereto as EXHIBIT A filed with the Florida Secretary of State.

(b) A fully executed copy of the closing document(s) evidencing the transfer to and assumption by LH of the assets and liabilities of the District as described herein in Sections 2.1.1 and 2.2.1 and set forth on Schedules 2.1.1 and 2.2.1 attached hereto.

2.5 **Dissolution of the District.** No later than 30 days after the Closing Date, the District shall notify the Florida Department of Economic Opportunity. Upon receipt of such notice by the Florida Department of Economic Opportunity, the District shall be automatically dissolved and cease to exist as a matter of law in accordance with chapter 2023-326, Laws of Florida.

ARTICLE 3

POST-CLOSING COVENANTS AND OVERSIGHT

3.1 **Covenants.** Following the Closing Date, unless modified as set forth in Section 3.5, LH shall do the following:

3.1.1 **Programs and Services.** LH shall ensure existing Health System programs and services as set forth on Schedule 3.1.1 attached hereto (the “Major Service Lines”) continue to be provided to residents of Lee County in perpetuity, absent a Significant Reimbursement Change;

3.1.2 **Charity Care.** LH shall maintain its tax-exempt nonprofit status and continue to maintain a policy of providing charity care to the underserved population in Lee County consistent with similarly situated tax-exempt Safety Net Providers in Florida;

3.1.3 **Medicare/Medicaid.** LH shall continue to participate in the Medicare and Medicaid programs and maintain the necessary licenses for LH’s general acute care hospitals in Lee County to participate in the Medicare and Medicaid programs;

3.1.4 **Sale or Dissolution of LH.** LH shall not sell, lease or transfer, directly or indirectly, all, or substantially all, of the assets or operations of LH, or dissolve LH.

The covenants described in this Section 3.1 are collectively referred to as the “Covenants”, and each individually, a “Covenant.”

3.2 **LH Covenants; Annual Report; Oversight Construct.**

3.2.1 As of the Closing, LH agrees to be bound by the Covenants, which may be modified from time-to-time as set forth in Sections 3.5 and 3.6 herein. To memorialize the Covenants, effective as of the Closing Date, LH shall adopt Articles of Incorporation in the form attached hereto as **EXHIBIT A** (the “Articles of Incorporation”), and shall cause the Articles of Incorporation to be filed with the Secretary of State of the State of Florida. LH shall take no action to amend the Articles of Incorporation without the express written consent of the County and the Florida nonprofit corporation to be formed as the oversight monitor of LH (the “Oversight Monitor”) (if during the Oversight Period as defined below).

3.2.2 Prior to the Closing, the District shall submit a plan for the organization of the Oversight Monitor, including proposed drafts of the governing documents and the proposed federal income tax status of the Oversight Monitor, to the County for approval. Once formed, the Oversight Monitor shall execute and deliver a joinder (“Joinder”) becoming a party to this Agreement solely with respect to the oversight provisions set forth in ARTICLE 3 of this Agreement, which Joinder shall include the consent of the Oversight Monitor to the exclusivity of

the dispute resolution provisions as set forth in Section 3.4.1(a). Execution of such Joinder by the Oversight Monitor and delivery of the same to LH shall be a condition precedent to the Oversight Monitor's service as set forth herein. The Oversight Monitor shall be formed in order to ensure LH's compliance with the Covenants set forth in this ARTICLE 3, unless or until LH and the County agree otherwise (the "Oversight Period"), at which time the County shall assume such responsibility.

3.2.3 The Oversight Monitor shall maintain a board (the "Oversight Monitor Board") consisting of three (3) individual members who are representative of LH's primary service areas.

(a) At least one (1) member of the Oversight Monitor Board shall be an attorney, and at least one (1) member shall have a background in finance/accounting.

(b) The initial members of the Oversight Monitor Board shall be the individuals agreed upon by the District and County prior to the Closing.

(c) Members of the Oversight Monitor Board may be removed at any time with or without cause upon a two-thirds majority vote of all of the Oversight Monitor Board excluding the Directors subject to the removal action by majority vote of the County Commission and five (5) Business Days' advance written notice to LH. Replacement members of the Oversight Monitor Board shall be selected by majority vote of the Oversight Monitor Board. Provided, however, that the County and LH shall each have the right, by majority vote of either of their respective boards, to veto the appointment or selection of new or replacement Directors by delivering notice of the same within thirty (30) days of the appointment or selection of said replacement Director~~County Commission~~.

3.2.4 The Oversight Monitor shall have exclusive enforcement authority over the Covenants during the Oversight Period. The Oversight Monitor shall be responsible for investigating any suspected or alleged breaches of the Covenants, and shall issue a report to the County and LH with the Oversight Monitor's findings.

3.2.5 The Oversight Monitor may retain a qualified professional or professionals with demonstrated expertise in health care operations, finance, accounting or related fields, as well as experience performing in an oversight role, to advise the Oversight Monitor on compliance with the Covenants.

3.2.6 For the duration of the Oversight Period, at its sole expense, LH shall prepare an Annual Statement of Compliance, with Form 990(s) attached, that certifies LH's compliance with the Covenants (the "Annual Report").

3.3 Oversight Monitor Expenses; Reviewer.

3.3.1 Subject to adjustment by the Reviewer as set forth in Section 3.3.3 below, LH shall reimburse the Oversight Monitor for all reasonable expenses incurred by the Oversight Monitor related to its duties during the Oversight Period, including any attorneys' fees related to the enforcement of the Covenants.

3.3.2 LH shall, at the Closing, transfer \$ _____ to the Oversight Monitor for the startup and initial operations costs of the Oversight Monitor and for determining and preparing a proposal for the annual budget needed to analyze and review the Annual Report and monitor the Covenants (the “Annual Budget”). Within six (6) months of the Closing, the Oversight Monitor Board shall submit the proposal for the Annual Budget to LH. If LH and the Oversight Monitor Board are unable to reach agreement on the Annual Budget within ninety (90) days of submission of the proposed Annual Budget, LH and the Oversight Monitor shall stipulate and agree the first year Annual Budget shall be \$ _____ payable within ten (10) Business Days thereof (the “Initial Budget”). Unless otherwise mutually agreed to between LH and the Oversight Monitor, each following year, the Annual Budget shall be equal to the Initial Budget increased by ____ percent (___%) per annum for the duration of the Oversight Period and payable not less than thirty (30) days prior to the first day of each anniversary of the Closing Date.

3.3.3 In the event that, during the Oversight Period, the Oversight Monitor believes it may incur any expense not accounted for in the Annual Budget (an “Excess Expense”), the Oversight Monitor shall notify LH as soon as practicable and, in any event, prior to incurring the Excess Expense. The Oversight Monitor shall provide LH with all documentation related to the proposed Excess Expense, including, without limitation, all quotes, estimates, bills, invoices, contracts, statements of work, and accounting information (the “Excess Expense Documentation”). The Oversight Monitor shall promptly provide any additional information LH reasonably requests for the purpose of reviewing the Excess Expense within thirty (30) days from receipt of the Excess Expenses Documentation and all reasonable supplemental requests made by LH.

(a) A designated committee of the LH Board shall review the information provided by the Oversight Monitor to determine whether the Excess Expense is reasonable. If LH determines that the Excess Expense is reasonable, LH shall pay to the Oversight Monitor the amount of the Excess Expense.

(b) If LH determines that the Excess Expense is not reasonable, LH shall select a third-party reviewer, subject to the Oversight Monitor’s approval, which shall not be unreasonably withheld, for the purpose of resolving disputes related to the Excess Expense (the “Reviewer”).

(c) The Reviewer shall engage in an independent review of whether the Excess Expense was reasonably incurred by the Oversight Monitor. The Oversight Monitor shall promptly provide the Reviewer with any additional information requested by the Reviewer. Upon receipt of the Excess Expense Documentation and any reasonably requested supplemental information pursuant to this Section 3.3.3, the Reviewer shall deliver findings and recommendation to the LH Board and the Oversight Monitor within thirty (30) days of receipt (the “Reviewer Findings”).

(d) LH shall pay to the Oversight Monitor any portion of the Excess Expense the Reviewer determines to be reasonable in the Reviewer Findings. LH shall not be required to pay to the Oversight Monitor any portion of the Excess Expense the Reviewer determines to be not reasonable in the Reviewer Findings. Any portion of the Excess Expense

payable pursuant to the Reviewer Findings shall be paid by LH within ten (10) Business Days of receipt of the Reviewer Findings.

(e) The decision of the Reviewer with respect to the Excess Expense shall be final and binding on LH and the Oversight Monitor. LH shall be solely responsible for the Reviewer's reasonable fees and expenses in connection with its review of the Excess Expense.

(f) This Section 3.3.3 shall not apply to expenses incurred by the Oversight Monitor in connection with its investigation of possible breaches of the Covenants and its participation in the dispute resolution process set forth in Section 3.4 and ARTICLE 4.

3.4 **Breaches of Covenants; Observer Covenant Enforcement Mechanism.**

3.4.1 Disputes Generally.

(a) The Parties irrevocably consent and agree that any dispute between LH and the Oversight Monitor or the County, as the case may be, arising out of or relating to the Covenants alleged in a Default Event (a "Covenant Dispute") shall be resolved exclusively in the manner provided in this Section 3.4. Any dispute arising or relating to this Agreement, other than a Covenant Dispute (a "Mission Agreement Dispute"), shall be resolved exclusively in the manner provided in ARTICLE 4.

(b) Each Party covenants and agrees that it shall not commence or maintain any Proceeding, including any Proceeding to seek and obtain specific performance, injunctive relief or other equitable remedies, with respect to any Covenant Dispute except as expressly provided in this Section 3.4 or a Mission Agreement Dispute except as expressly provided in ARTICLE 4.

3.4.2 Procedure for Potential Breach of Covenants.

(a) If during the Oversight Period, the Oversight Monitor, or if following the Oversight Period, the County (an "Observer"), believes that a breach of a Covenant has occurred (the "Default Event"), the Observer shall, with reasonable promptness, deliver a written notice regarding the alleged breach, describe in reasonable detail the alleged Default Event, and state its intent to enforce its rights hereunder (the "Observed Covenant Breach Notice").

(b) LH shall notify the Observer within fifteen (15) days of its receipt of the Observed Covenant Breach Notice whether it agrees with the Observed Covenant Breach Notice and, if so, the extent to which it agrees to comply with any actions proposed by the Observer to cure the Default Event and the time it anticipates will be required to cure the Default Event, and whether the Default Event is the result of a Force Majeure Event. LH shall have sixty (60) days from the date of the Observed Covenant Breach Notice to cure the Default Event, or, if not curable within sixty (60) days, to demonstrate substantial progress toward a complete cure of the Default Event, unless (i) the Default Event is not curable, or (ii) a Force Majeure Event is making it infeasible for LH to perform its obligations, in which case LH shall have the period of the duration of the Force Majeure Event and the period following the Force Majeure Event that LH reasonably requires to remediate any damage to property, plant or equipment resulting from such Force Majeure Event and/or the period that LH reasonably requires to resume operations or other status

or activity that have been stopped, curtailed or otherwise disrupted as a result of such Force Majeure Event to resume satisfaction of the relevant Covenant or Covenants (such period, the “Force Majeure Period”), and during the Force Majeure Period LH shall not be in breach of the Covenant(s) identified in the Observed Covenant Breach Notice, so long as LH continues diligently to perform its obligations to the extent that remains feasible for the duration of the Force Majeure Period and uses commercially reasonable efforts to adjust its operations to resolve or mitigate the adverse impact of the Force Majeure Event.

(c) If, on its own volition, LH believes it may have committed, or may imminently commit, a Default Event, LH may deliver to the appropriate Observer with reasonable promptness, written notice of the alleged Default Event, stating with sufficient detail the underlying facts of the Default Event, providing evidence to support the claim, stating whether the Default Event is due to a Force Majeure Event, and stating the cure and corrective action, along with reasonably expected timelines and future disclosure milestones regarding the progress of the cure (the “Disclosed Covenant Breach Notice”).

(d) Within thirty (30) days after LH’s receipt of the Observed Covenant Breach Notice or the Observer’s receipt of the Disclosed Covenant Breach Notice, the chief executive officer of LH and the Chair of the Observer (together, the “Negotiation Parties”), shall meet in person (each, a “Negotiation”) to attempt in good faith to resolve the issues identified in the Observed Covenant Breach Notice or the Disclosed Covenant Breach Notice. The Negotiation Parties may, in their sole discretion, agree to additional Negotiations.

(i) If the Negotiation Parties are able to resolve the issues identified in the Observed Covenant Breach Notice or the Disclosed Covenant Breach Notice to each party’s mutual satisfaction at such meeting (or any subsequent meetings which the parties agree to hold), the Observer shall provide written notice within fifteen (15) days of the last Negotiation to LH formally withdrawing the applicable Observed Covenant Breach Notice or waiving the applicable Disclosed Covenant Breach Notice given by LH.

(ii) If, within thirty (30) days after the first Negotiation (which period may be extended by written agreement of the Negotiation Parties), the Negotiation Parties are not able to resolve the issues identified in such Observed Covenant Breach Notice or Disclosed Covenant Breach Notice to the mutual satisfaction of both parties at such meeting or in subsequent meetings, and the Observer desires to pursue the exercise of its rights under Section 3.4.3, the Observer shall provide written notice to LH formally stating its intent to exercise its remedies under Section 3.4.3 on behalf of the County (the “Notice of Exercise of Remedies”).

(e) Within thirty (30) days of the Observer’s issuance of a Notice of Exercise of Remedies, LH and the Observer shall initiate mutual efforts to try in good faith to settle the dispute by non-binding mediation administered by the American Arbitration Association (the “AAA”) under its Commercial Mediation Procedures (the “Mediation”) before resorting to litigation or some other dispute resolution procedure. The Mediation must be conducted and completed within thirty (30) days of the date a Mediator has been selected or appointed (the “Mediation Deadline”). The Mediation must take place in Fort Myers, Florida, and the Mediator must be someone with hospital or healthcare system-level health care experience who has expertise with mediating controversies involving complex commercial health care transactions or the subject

of the particular dispute involved and with no conflict of interest. The Mediator shall be disqualified as a witness, consultant, expert or counsel for either party with respect to the matters in dispute and any litigation or other matters relating thereto. Within fifteen (15) days after the Notice of Exercise of Remedies is delivered by the Observer, if the parties cannot agree on a proposed mediator, one shall be appointed by the executive director or other functional equivalent of the AAA. Each party shall designate no more than three (3) representatives who shall meet with the Mediator to mediate the dispute.

3.4.3 Remedies for Breach of Covenants. In the event that LH, in its operation of the Health System, breaches a Covenant, the County shall have all rights under this Agreement as a matter of law and equity, including, without limitation, the institution of legal action for specific performance and/or damages, provided however, that no Party shall be entitled to seek and obtain specific performance, injunctive relief or other equitable remedies from any court of competent jurisdiction for a Covenant Dispute until the cure, negotiation, mediation and dispute provisions set forth in Section 3.4 above or in the other provisions of this Agreement have been satisfied.

3.5 Amendments to Covenants. LH may propose an amendment to a Covenant if circumstances change that would make it infeasible for LH to comply with such Covenant. Approval of the County by majority vote of the County Commission (which approval shall not be unreasonably withheld, conditioned or delayed) shall be required to amend a Covenant.

3.6 Significant Reimbursement Change.

3.6.1 Prior to the delivery of the applicable Significant Reimbursement Change Notice pursuant to this Section 3.6, LH shall have first used Reasonable Efforts to adjust its operations to resolve the adverse impact of such Significant Reimbursement Change and reasonably determined that satisfactory resolution of such Significant Reimbursement Change is not feasible using Reasonable Efforts.

In the event that LH determines that a Significant Reimbursement Change has occurred, LH may deliver a written notice to the Observer (a “Significant Reimbursement Change Notice”) describing in reasonable detail the Significant Reimbursement Change and the calculations underlying LH’s determination with respect to the same. The Observer may, in good faith, dispute the occurrence of the Significant Reimbursement Change set forth in the Significant Reimbursement Change Notice by delivering a Dispute Notice to LH within thirty (30) days of LH’s delivery of the Significant Reimbursement Change Notice, which Dispute Notice shall state in reasonable detail the basis for such dispute; provided, that if the Observer does not timely deliver a Dispute Notice pursuant to this Section 3.6.1, the Significant Reimbursement Change set forth in the Significant Reimbursement Change Notice shall be deemed final and binding and to have been finally determined to have occurred for purposes of this Agreement. If the Observer timely delivers a Dispute Notice pursuant to this Section 3.6.1, LH and the Observer shall attempt to reconcile their respective determinations as to whether the Significant Reimbursement Change set forth in the Significant Reimbursement Change Notice occurred, which reconciliation, if any, shall be in writing, signed by LH and the Observer and shall be final and binding for purposes of this Agreement. If LH and the Observer are unable to reconcile their respective determinations within thirty (30) days following delivery to LH of a Dispute Notice, then LH and the Observer shall submit the dispute to an accounting firm of recognized national standing acceptable to LH and the

County, which accounting firm is independent of LH and the County (the “Accounting Firm”) for resolution pursuant to the process set forth below. In the event that a dispute is submitted to the Accounting Firm pursuant to this Section 3.6.1 LH and the Observer shall make readily available to the Accounting Firm the financial books and records relevant to the dispute, including any accountants’ work papers (subject to the execution of any access letters that such accountants may require in connection with the review of such work papers). The Accounting Firm shall act as an expert and not as an arbitrator. LH and the Observer shall cause the Accounting Firm to deliver to LH and the Observer as promptly as practicable (but in any event within thirty (30) days of its retention) a written report setting forth its resolution of the dispute. LH shall be responsible for the fees and expenses of the Accounting Firm. Absent manifest error, in which case the dispute resolution provisions set forth in Section 3.4.2 shall apply, the written report prepared by the Accounting Firm shall be final and binding for purposes of this Agreement.

ARTICLE 4

DISPUTE RESOLUTION FOR MISSION AGREEMENT DISPUTES

4.1 Mission Agreement Disputes.

4.1.1 All Covenant Disputes shall be governed by Section 3.4.

4.1.2 Each Party shall have the right to declare the existence of a Mission Agreement Dispute by providing a Dispute Notice in accordance with the notice guidelines set forth in Section 5.2 to the other, which Dispute Notice shall describe in reasonable detail the nature of the Mission Agreement Dispute, identify whether the Dispute Notice is a Covenant Breach Notice, and state such Party’s proposed resolution of the Mission Agreement Dispute. If a Dispute Notice is a Covenant Breach Notice, such Covenant Dispute shall be governed by Section 3.4 herein.

4.2 Negotiation and Mediation.

4.2.1 Within fifteen (15) Business Days of the delivery of a Dispute Notice, the Negotiation Parties shall agree to a negotiation calendar (which timeline may be extended at the written consent of the Negotiation Parties) with at least one Negotiation to attempt in good faith to resolve the issues identified in the Dispute Notice.

4.2.2 If, within thirty (30) days of the last scheduled negotiation on the negotiation calendar, the Mission Agreement Dispute is not resolved by mutual agreement of the Negotiation Parties, the Negotiation Parties shall try in good faith to settle the dispute by Mediation. The Mediation must be conducted and completed by the Mediation Deadline, take place in Fort Myers, Florida, and the Mediator must be someone with hospital or healthcare system-level health care experience.

4.2.3 All negotiations and mediations under this Section 4.2 shall be considered confidential and shall be treated as compromise and settlement negotiations for purposes of the applicable rules of evidence. Each Party shall be responsible for any and all costs and fees incurred by such party in connection with any negotiation or mediation pursuant to this Section 4.2 and

shall share the fees and expenses of any mediation equally (unless otherwise agreed by the Negotiation Parties).

4.3 **Waiver of Jury Trial.** Each Party acknowledges and agrees that any controversy that may arise under this Agreement is likely to involve complicated and difficult issues. **THEREFORE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE DISTRICT, LH AND THE COUNTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT THAT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT (WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE) AND AGREES THAT SUCH LITIGATION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY (TO THE EXTENT OTHERWISE REQUIRED OR PERMITTED BY THIS AGREEMENT).** Each of the District, LH and the County certifies and acknowledges that (i) no representative, agent or attorney of any other party hereto has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver, (ii) such party understands and has considered the implications of such waiver, (iii) such party makes such waiver voluntarily and (iv) such party has been induced to enter into this Agreement by, among other things, the mutual waiver and certifications in this Section 4.3. Any party may file an original counterpart of a copy of this Agreement with any court as written evidence of the consent of the other parties to the waiver of their right to a trial by jury.

4.4 **Exclusive Forum and Venue.** **EACH PARTY HEREBY IRREVOCABLY (I) ACCEPTS, CONSENTS TO AND SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA AND THE STATE COURTS OF THE STATE OF FLORIDA, SITTING IN LEE COUNTY, FLORIDA, OR SUCH OTHER FEDERAL OR STATE COURT SITTING IN THE STATE OF FLORIDA WHERE VENUE IS MANDATORY PURSUANT TO APPLICABLE LAW (THE “DESIGNATED COURTS”), (II) AGREES THAT ALL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT MUST BE LITIGATED IN THE DESIGNATED COURTS AND THAT IT SHALL NOT COMMENCE ANY PROCEEDING IN ANY OTHER COURT, (III) WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE IN THE DESIGNATED COURTS, INCLUDING ANY CLAIM OR DEFENSE OF FORUM NON CONVENIENS (I.E., THAT ANY ACTION, SUIT OR PROCEEDING BROUGHT IN A DESIGNATED COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM) AND (IV) AGREES THAT ANY FINAL JUDGMENT RENDERED BY THE DESIGNATED COURTS IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND BINDING UPON SUCH PARTY AND MAY BE ENFORCED IN ANY OTHER COURTS HAVING JURISDICTION OVER SUCH PARTY BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.**

ARTICLE 5

GENERAL PROVISIONS

5.1 **Consummation of Conversion.** The Parties shall take no action which is inconsistent with its obligations hereunder or which could materially delay the consummation of the Conversion.

5.2 **Notices.** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given or made as follows: (a) if sent by registered or certified mail in the United States return receipt requested, upon receipt; (b) if sent designated for overnight delivery by nationally recognized overnight air courier (such as Federal Express, UPS or DHL), one (1) Business Day after mailing; (c) if sent by facsimile transmission before 5:00 p.m. (sender's time) and receipt is confirmed through a delivery report; (d) if sent by facsimile transmission after 5:00 p.m. (sender's time) and receipt is confirmed through a delivery report, on the following Business Day; (e) or if otherwise actually personally delivered, when delivered; provided that such notices, requests, demands and other communications are delivered to the addresses set forth below, or to such other address as any Party shall provide by like notice to the other Party:

The District: Lee Memorial Health System
Gulf Coast Medical Center Medical Office Bldg.
13685 Doctors Way, Suite 190
Fort Myers, FL 33912
Attention: Chair of Board of Directors

With a simultaneous copy to: [Firm or Entity]
[Address]
Attention: _____

LH: _____

With a simultaneous copy to: _____

The County: Lee County, Florida
2120 Main Street
Fort Myers, Florida 33901
Attention: _____

With a simultaneous copy to: _____

5.3 **Entire Agreement; Amendment.** This Agreement supersedes all previous agreements oral or written, and constitutes the entire agreement among the District, LH and the County respecting the subject matter of this Agreement, and no Party shall be entitled to benefits other than those specified herein. Unless explicitly stated otherwise herein, this Agreement may be supplemented, amended, or modified, and compliance with any provision of this Agreement waived, only by an agreement in writing signed by LH, the District and the County.

5.4 **Exhibits; Schedules.** The Exhibits and/or Schedules to this Agreement are incorporated herein by reference and made a part hereof.

5.5 **Non-Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, assigns and legal representatives, but no Party may assign its rights in this Agreement or delegate its duties under this Agreement to a third party by any means without first obtaining the prior written consent of the other Parties.

5.6 **No Third-Party Beneficiaries.** This Agreement shall not confer any rights or remedies upon any Person or other third party other than the Parties and their respective successors and permitted assigns.

5.7 **No Agency Relationship.** Nothing contained in this Agreement will be deemed to be construed by LH, the District, the County or any other third party as creating an agency relationship between LH and the District or LH and the County.

5.8 **Additional Assurances.** The provisions of this Agreement shall be self-operative and shall not require further agreement by the Parties except as may be herein specifically provided to the contrary; *provided, however*, at the request of a Party, the other Party shall execute such additional instruments and use its commercially reasonable efforts to take such additional actions as the requesting Party may deem necessary to effectuate this Agreement.

5.9 **Severability.** In the event any provision of this Agreement is held to be invalid, illegal or unenforceable, in whole or in part, for any reason and in any respect, such invalidity, illegality, or unenforceability shall in no event affect, prejudice or disturb the validity of any remaining provision of this Agreement, which shall be and remain in full force and effect, and binding and enforceable in accordance with its terms.

5.10 **Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida; *provided, however*, that the conflicts of law principles of the State of Florida shall not apply to the extent they would operate to apply the laws of another state.

5.11 **Construction.** This Agreement and all documents or instruments delivered pursuant hereto shall be construed without regard to the identity of the person who drafted the

various provisions of the same. Each and every provision of this Agreement and such other documents and instruments shall be construed as though the Parties participated equally in the drafting of the same. Consequently, the Parties acknowledge and agree that any rule of construction that a document is to be construed against the drafting Party shall not be applicable to this Agreement.

5.12 **Waiver of Terms.** The failure of any Party to insist, in any one or more instances, on performance of any of the terms, covenants and conditions of this Agreement shall not be construed as a waiver or relinquishment of any rights granted hereunder or thereunder or of the future performance of any such term, covenant or condition, but the obligations of the Parties with respect thereto shall continue in full force and effect.

5.13 **Counterparts; Signatures.** The Parties agree that this Agreement may be executed in multiple originals, each of which shall be considered an original for all purposes and, collectively, shall be considered to constitute this Agreement. The Parties further agree that signatures transmitted by facsimile or in portable document format (pdf) may be considered an original for all purposes, including, without limitation, the execution of this Agreement and enforcement of this Agreement.

5.14 **Time is of the Essence.** Time is hereby expressly made of the essence with respect to each and every term and provision of this Agreement and any other agreements determined by the Parties to be necessary or appropriate to be entered into in connection with the Conversion or the other transactions contemplated herein.

5.15 **Access to Records and Information.** If and to the extent applicable to this Agreement and to any agreement contemplated hereunder or entered into pursuant hereto between or among the Parties, the Parties agree to comply with the requirements of Public Law 96-499, Section 952 (Section 1861(v)(1)(I) of the Social Security Act) and regulations promulgated thereunder.

5.16 **Survival.** The terms and conditions set forth in this Agreement shall survive indefinitely following the Closing and consummation of the Conversion.

[Signatures on following page.]

IN WITNESS WHEREOF, the Parties respectively, acting through their duly authorized representatives, have executed this Mission Agreement as of the Effective Date.

LEE MEMORIAL HEALTH SYSTEM

By: _____
Chair of the Board of Directors

LEE HEALTH SYSTEM, INC. d/b/a LEE HEALTH

By: _____
[Title]

LEE COUNTY, FLORIDA

By: _____
[Title]

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Schedule 3.1.1
Major Service Lines

1. Behavioral Health
2. Cancer
3. Cardiovascular
4. General Medicine
5. General Surgery
6. Inpatient Care
7. Medical Education
8. Neonatology
9. Neurosciences
10. Orthopedics
11. Pediatrics
12. Primary Care
13. Trauma Services
14. Women's Health

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This document is intended as a draft for discussion purposes only and is subject to further review and consideration by the Board and legal counsel.