

Lee Health Board of Directors Special Meeting



1:00 p.m. Thursday, May 16, 2024



All lines will be automatically muted by the host.

Please press *6 to mute/unmute

AGENDA

LEE MEMORIAL HEALTH SYSTEM BOARD OF DIRECTORS SPECIAL MEETING

May 16, 2024 at 1:00 P.M.

Location: Gulf Coast Medical Center Board Room, Suite 190

Teleconference Dial-In # 1 415 655 0002 Access Code 2303 571 3124

- I. **Call to Order** (*Donna Clarke, Board Chair*)

- II. **Public Input**

- III. **Florida Nonprofit Governance Structure** (*D. Ty Jackson, Partner & Jesse C. Neil, Partner – Holland & Knight*) **(Review)**
 - A. Mission Agreement

- IV. **Review Conversion Evaluation Draft Resolutions** (*D. Ty Jackson, Partner & Jesse C. Neil, Partner – Holland & Knight*) **(Review)**

- V. **Adjourn**

Date of Next Board of Directors Meeting: May 30, 2024

Time: 1:00 PM

Location: Gulf Coast Medical Center Board Room, 13685 Doctor's Way Ft. Myers FL 33912

Teleconference: Dial-In #415 655 0002 Access Code 2303 571 3124

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.

Florida Nonprofit Governance Structure – Mission Agreement

D. Ty Jackson, Partner & Jesse C. Neil, Partner – Holland & Knight

Outline for Discussion

- Fiduciary Process
- Rationale for Conversion
- Mission Agreement
- Rationale for Monitor



Fiduciary Process

- Lee Health and its mission are sacred and need to be secured
- Fiduciary process: in 2023, Lee Health initiated a process to assess its structure and determine what changes, if any, should be considered to best serve the residents of Lee County
- **Objective: position Lee Health for sustainable success**



Features Guiding Review

- Nimble Governance Structure
- Consistent & Accountable Governance Structure
- De-Politicize Governance & Operations

Strategic Considerations

- Untapped potential: our community has a diverse and growing economy, job growth, significant public and private investment, and strong civic and political leadership
- Public hospital structure is impeding operational and strategic initiatives
 - Geographic limitations
 - Governance structure and politics
 - Sunshine Laws

Mission Agreement – Background

- Why is a Mission Agreement Needed?
- Enabling Legislation Requires Enforceable Contract:
 - “An agreement between the system board and Lee County must be completed...and include:
 - An enforceable commitment that programs and services provided by Lee Memorial Health System will continue to be provided to residents of Lee County in perpetuity so long as the succeeding nonprofit entity is in operation or, if otherwise agreed to, until the succeeding nonprofit entity has otherwise met all obligations set forth in the agreement.”



Mission Agreement – Covenants

- **Mission** – Ensure existing programs and services continue for Lee County residents in perpetuity
- **Charity Care** – Maintain nonprofit status and provide charity care to underserved population in Lee County consistent with similarly situated tax-exempt safety net providers in Florida
- **Medicare & Medicaid** – Continue to participate in traditional, fee-for-service Medicare/Medicaid and maintain licenses to participate in Medicare/Medicaid
- **Local Control** – Shall not sell, lease or transfer, directly or indirectly, all, or substantially all, of the assets or operations of Lee Health



Mission Agreement – Information & Reports

- Oversight Monitor will be special-purpose nonprofit entity
- Lee Health shall make available to the Oversight Monitor any such documents and information as may be reasonably requested
- Oversight Monitor may retain a qualified professional or professionals with demonstrated expertise in healthcare operations, finance, accounting or related fields
- Annual Statement of Compliance



Oversight Monitor Objectives

- Oversight Monitor is autonomous entity that has agreed by contract to certain functions
- Oversight Monitor is NOT an extension of State Government or its County subdivisions
- Purpose is to insulate Lee County from hospital matters and Lee Health from political matters
- **Shared Community Objective: Strong Lee Health**



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 SCHEDULES

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

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LIST OF EXHIBITS

Exhibit A

Amended and Restated Articles of Incorporation of Lee Health System, Inc.

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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 district 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;

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

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

1.2.6 Strengthening existing clinical offerings of the Health System;

1.2.7 Promoting professional and graduate educational efforts;

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

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

1.2.10 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. 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.

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 AND VENUE IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, FORT MYERS DIVISION, AND THE STATE COURTS OF THE STATE OF FLORIDA, SITTING IN LEE COUNTY, FLORIDA (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.

EXHIBIT A

AMENDED AND RESTATED ARTICLES OF INCORPORATION¹
OF
LEE HEALTH SYSTEM, INC.

[Date]

DRAFT

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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The undersigned, acting as an officer of Lee Health System, Inc., under Chapter 617 of the Florida Statutes, and Section 501(c)(3) of the Internal Revenue Code of 1986, including its regulations, all as amended from time to time (the “Internal Revenue Code”), hereby adopts the following Amended and Restated Articles of Incorporation (the “Articles of Incorporation”):

**ARTICLE 1
NAME**

The name of this corporation is Lee Health System, Inc. (the “Corporation”).

**ARTICLE 2
PRINCIPAL PLACE OF BUSINESS AND MAILING ADDRESS**

The initial principal place of business and mailing address of the Corporation is:

4211 Metro Parkway, Fort Myers, Florida 33916.

**ARTICLE 3
DURATION AND COMMENCEMENT OF EXISTENCE**

The Corporation will have perpetual existence, commencing with the filing of these Articles of Incorporation with the Florida Department of State.

**ARTICLE 4
PURPOSES**

The Corporation is irrevocably dedicated to, and is organized and will be administered and operated exclusively for charitable, educational, and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code. The Mission of the Corporation is to be a trusted partner, empowering healthier lives through care and compassion. Without limiting the foregoing, and in furtherance of such purposes, the Corporation is authorized:

(a) To promote, support, and engage in activities carried on for charitable, scientific and educational purposes, by the direct conduct of such activities. The charitable activities to be conducted by the Corporation may include, but are not limited to operation of a private, nonprofit hospital system to advance health and empower healthy living through the provision of high quality healthcare services to the community, emphasizing compassion, innovation, and excellence.

(b) To adopt a Vision and Values for the Corporation consistent with the Corporate Purposes, each as may be amended from time to time.

(c) To receive and maintain personal or real property, or both; and, subject to the restrictions and limitations set forth below, to use and apply the whole or any part of the income from such property and the principal thereof exclusively for charitable, educational, and scientific purposes either directly or by contributions to other charitable organizations.

(d) To receive assistance, money, real or personal property and any other form of contributions, gift, bequest, or devise from any person or entity, to be used in the furtherance of the purpose of the Corporation, and to enter into agreements or contracts for contributions to the Corporation to be used in the furtherance of its purposes, provided that gifts will be subject to acceptance by the Board of Directors as required by the Bylaws of the Corporation.

(e) To establish one or more offices and employ such personnel as may be necessary and appropriate in the judgment of the Board of Directors, and pay reasonable compensation for the services of such persons.

(f) To distribute, in the manner, form, and method, and by the means determined by the Board of Directors of the Corporation, any and all forms of contributions or other funds received by it in carrying out charitable, educational and scientific programs of the Corporation in the furtherance of its stated purposes. Money and real or personal property contributed to the Corporation in furtherance of its purposes are and will continue to be used exclusively for such purposes.

(g) To invest and reinvest surplus funds in such securities and properties consistent with the Corporation's investment policy.

(h) To purchase, acquire, own, hold, guarantee, sell, assign, transfer, mortgage, pledge, loan, or otherwise dispose of and deal in any bonds, securities, evidence of indebtedness, or other personal property, as well as to purchase, acquire, own, hold, sell, transfer, mortgage, or otherwise dispose of and deal in real estate; and, as the owner of any such real or personal property, to exercise all the rights, powers, and privileges of ownership.

(i) To contract and be contracted with, and to sue and be sued.

(j) To adopt and use an official seal for the Corporation.

(k) To do all acts and things requisite, necessary, proper and desirable to carry out and further the purposes of the Corporation; and, in general, to have all the rights, privileges, and immunities, and enjoy all the benefits of the laws of the State of Florida applicable to corporations of this character, including but not limited to the powers described in section 617.0302 of the Florida Statutes, subject however to the requirements of Section 501(c)(3) of the Internal Revenue Code and to the other limitations provided in these Articles of Incorporation.

ARTICLE 5 MEMBERSHIP

The Corporation shall not have members.

ARTICLE 6 BOARD OF DIRECTORS AND BYLAWS

All corporate powers will be exercised by or under the authority of, and the affairs of the Corporation will be managed under the direction of, a Board of Directors. The number, manner of

selection, duties, terms, qualifications, and other matters relating to the Board of Directors of the Corporation shall be as provided in the Bylaws of the Corporation. The Bylaws of the Corporation shall be adopted by the Board of Directors, and thereafter the Corporation shall be governed by such Bylaws and these Articles of Incorporation, each as may be amended or amended and restated from time to time.

ARTICLE 7 COMPENSATION AND INDEMNIFICATION OF DIRECTORS AND OFFICERS

7.1 Compensation. A director or officer of the Corporation may receive reasonable compensation for personal services rendered as a director or officer, or in any other capacity, so long as the services are reasonable and necessary to carrying out the charitable, educational and scientific purposes of the Corporation, and may be reimbursed for expenses or advances paid on behalf of the Corporation, provided they are reasonable in character and amount and approved for payment in the manner provided by the Bylaws. Provisions relating to compensation payable to directors or officers of the Corporation will be stated in the Bylaws. Any such compensation shall be limited to reasonable compensation for personal services rendered to the Corporation, which services shall be reasonable and necessary to carrying out the charitable, educational and scientific purposes of the Corporation.

7.2 Indemnification. Every director and officer of the Corporation will be indemnified by the Corporation against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed in connection with any proceeding or any settlement of any proceeding (including any appeals) to which a director or officer may be a party or may become involved by reason of being or having been a director or officer of the Corporation, whether or not a director or officer at the time such expenses are incurred, but only if (i) the director or officer is not adjudged guilty of or liable for willful misfeasance in the performance of his or her duties, and (ii) in the case of a settlement before entry of judgment, the Board of Directors approves such settlement and reimbursement as being in the best interest of the Corporation. The foregoing right of indemnification will be in addition to and not exclusive of all other rights to which a director or officer may be entitled by law. Appropriate liability insurance may be provided for every director, officer, and agent of the Corporation in amounts determined from time to time by the Board of Directors.

7.3 Interest of Directors and Officers in Contracts. Any contract, whether for compensation or otherwise, or other transactions between the Corporation and (i) one or more of its directors or officers, (ii) any firm of which one or more of its directors or officers are shareholders, partners, members, or employees, or in which they are interested, or (iii) any corporation, association, or partnership of which one or more of its directors or officers are shareholders, members, directors, officers, partners, or employees, or in which they are interested, will be valid for all purposes, despite the presence of such director or directors, or officer or officers, at the meeting of the Board of Directors of the Corporation which acts upon or in reference to such contract or transaction and despite his or their participation in such action. The fact of such interest must be disclosed to or known by the Board of Directors and the Board of Directors may, nevertheless, authorize, approve, and ratify such contract or transaction by vote of majority of the directors present. This section will not be construed to invalidate any contract or other

transaction which would otherwise be valid under the common and statutory law applicable thereto. This provision is subject to modification by any conflict of interest policy adopted by the Board of Directors of the Corporation.

7.4 Prohibition Against Self-Dealing and Excess Benefit Transactions. Anything contained in these Articles of Incorporation to the contrary notwithstanding, the Corporation shall make no payment that would constitute “self-dealing” as defined in Section 4941 of the Internal Revenue Code, or that would result in an “excess benefit transaction” as defined in Section 4958 of the Internal Revenue Code, as applicable pursuant to the federal foundation classification of the Corporation.

ARTICLE 8 CHARITABLE LIMITATIONS

Despite any other provision of these Articles of Incorporation, the Corporation may not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and section 617.0835 of the Florida Statutes. These restrictions include, but are not limited to, the following:

8.1 No Private Inurement. No part of the net earnings of the Corporation may inure to the benefit of, or be distributable to, the directors or officers of the Corporation, or to any other private persons, except that the Corporation is authorized and empowered (i) to pay reasonable compensation for personal services rendered to the Corporation, so long as the services are reasonable and necessary to carrying out the charitable, educational and scientific purposes of the Corporation, and to reimburse expenses or advances made for the Corporation that are reasonable in character and amount, and (ii) to make payments and distributions to persons who are qualified to receive them in furtherance of the Corporation’s charitable, educational and scientific purposes as set forth herein. All of the net earnings and assets of the Corporation will be expended for the purposes stated in Section 501(c)(3) of the Internal Revenue Code.

8.2 No Political Activities; No Substantial Lobbying Activities. The Corporation shall not participate in, or intervene in, any political campaign on behalf of, or in opposition to, any candidate for public office by publishing or distributing statements, or in any other way. No substantial or material part of the activities of the Corporation shall be devoted to the carrying on of propaganda, or otherwise attempting to influence legislation.

8.3 Community Benefit. In carrying out the Corporation’s charitable purposes of promoting health for a broad cross section of the communities served by the Corporation, the Corporation will:

- (a) Cause each of its hospitals to provide quality healthcare and health services to all persons needing care without regard to race, creed, color, religion, national origin, citizenship, sex, disability, age, insurance coverage, or ability to pay;
- (b) Act consistently with the charity care and financial assistance policies of the Corporation to ensure that quality care services are available and provided

to all members of the communities served by the Corporation and that no individual is denied care based on the individual's financial status or inability to pay for the full cost of services;

- (c) Participate in Medicare and Medicaid programs to the extent permitted by applicable law;
- (d) Accept all emergency patients without regard to ability to pay;
- (e) Maintain an open medical staff except where a hospital approved exception has occurred; and
- (f) Provide public health programs of educational benefit and generally promote public health, wellness, and welfare to the communities served by the Corporation, subject, in each case, to changes in governmental law, policy, or regulation.

8.4 Compliance with Section 501(r) of the Internal Revenue Code. The Corporation will ensure compliance with the requirements of Section 501(r) of the Internal Revenue Code, as applicable to the Corporation and its hospitals, subject, in each case, to changes in governmental law, policy, or regulation.

8.5 Section 501(c)(3) Status. Notwithstanding any other provision of these Articles of Incorporation, the Corporation shall not carry on any activity not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(a) of the Internal Revenue Code and more particularly described in Section 501(c)(3) of the Internal Revenue Code, or (b) by a corporation, contributions to which are deductible under Sections 170(c)(2), 642(c), 2055, or 2522 of the Internal Revenue Code.

8.6 Private Foundation Rules. Notwithstanding any other provisions in these Articles of Incorporation, in the event that, and for so long as, the Corporation is classified as a private foundation within the meaning of Section 509(a) of the Internal Revenue Code, the Corporation:

- (a) shall not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code;
- (b) shall make distributions for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code;
- (c) shall not retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code;
- (d) shall not make any investments in such manner as to subject it to tax under Section 4944 of the Internal Revenue Code; and
- (e) shall not make any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code.

**ARTICLE 9
DISPOSITION OF ASSETS**

If the Corporation is dissolved pursuant to Florida law, the Board of Directors, after paying or making provision for the payment of all of the liabilities of the Corporation, shall dispose of all of the assets of the Corporation by transferring such assets to one or more organizations that are exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code and are engaged in activities of the type described in Article 4 above, as the Board of Directors determines. Any assets not so disposed of will be disposed of by the Circuit Court of the county in which the principal office of the Corporation is then located, exclusively for such charitable purposes, or to such organization or organizations as that Court determines are organized and operated exclusively for such purposes.

**ARTICLE 10
AMENDMENTS TO BYLAWS OR ARTICLES OF INCORPORATION**

The power to adopt, alter, amend, or repeal the Bylaws of the Corporation or these Articles of Incorporation is vested in the Board of Directors in accordance with the provisions of the Bylaws. Notwithstanding any other provision of these Articles of Incorporation or anything else to the contrary, the provisions of these Articles of Incorporation shall not be changed, modified, repealed or expanded in such a manner as to be inconsistent with the purposes for which the Corporation is formed, or to jeopardize the Corporation's federal tax-exempt status under Section 501(a) of the Internal Revenue Code as more particularly described in Section 501(c)(3) of the Internal Revenue Code (or any amendments or successor provisions thereto).

**ARTICLE 11
REGISTERED AGENT**

The name of the registered agent of the Corporation, who is authorized to receive service of process on behalf of the Corporation, is CT Corporation System. The street address of the initial registered office of the Corporation is 1200 South Pine Island Road, Plantation, Florida, 33324.

IN WITNESS WHEREOF, the undersigned officer has executed these Amended and Restated Articles of Incorporation as of this ____ day of _____, 2024.

[Name], [Officer Title]

**ACCEPTANCE OF REGISTERED AGENT DESIGNATED
IN ARTICLES OF INCORPORATION**

WITNESSETH:

That Lee Health System, Inc., has named CT Corporation System as its agent to accept service of process within this state.

ACKNOWLEDGMENT:

Having been named to accept service of process for the above-referenced Corporation at 1200 South Pine Island Road, Plantation, Florida, 33324, the undersigned hereby agrees to act in this capacity, agrees to comply with the provisions of all statutes relative to the proper and complete performance of the duties of a registered agent, and accepts the duties and obligations of section 617.0503 of the Florida Statutes.

Dated this ____ day of _____ 2024.

CT CORPORATION SYSTEM

By: _____

Name: _____

Its: _____

Review Conversion Evaluation Draft Resolutions

D. Ty Jackson, Partner & Jesse C. Neil, Partner – Holland & Knight

LEE MEMORIAL HEALTH SYSTEM BOARD OF DIRECTORS

RESOLUTION:

Conversion Evaluation – Discernment Phase Determination

The Board of Directors (“Board”) of Lee Memorial Health System (“Lee Health”), at a public meeting held on _____, adopts the following resolution concerning the Board’s determination as to whether the interests of Lee County residents are best served by converting to a nonprofit entity:

WHEREAS, Lee Health 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 Lee Health’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 district in Lee County by special act, Chapter 63-1552, Laws of Florida, and in 1968 Lee Health assumed operation of Lee Memorial Hospital;

WHEREAS, Lee Health has grown from a single hospital to a vibrant, full-service, multi-hospital health system operating in Lee County, Florida (the “Health System”);

WHEREAS, the health care industry has changed significantly since Lee Health assumed operation of Lee Memorial Hospital in 1968;

WHEREAS, even as the health care industry and the Lee County community evolve, the Board embraces its ongoing fiduciary duties of loyalty, care, and obedience to Lee Health and its mission as it endeavors to protect and strengthen the organization;

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 as a governmental entity may not be an effective or beneficial governmental function;

WHEREAS, the Amendment to the Special Act authorizes Lee Health to conduct an evaluation of the benefits to the residents of Lee County of converting Lee Health to a community-focused, non-governmental Florida nonprofit corporation (“Conversion”);

WHEREAS, on August 31, 2023, the Board authorized an evaluation of the benefits to the residents of Lee County of Conversion, consistent with the Amendment to the Special Act and its fiduciary duties to Lee Health and its mission;

WHEREAS, at the Board’s direction, Kaufman, Hall & Associates, LLC (“Kaufman Hall”), an independent entity with at least five years of experience conducting comparable evaluations of hospital organizations similar in size and function to the Health System, conducted an evaluation of Conversion according to applicable industry best practices;

WHEREAS, Lee Health engaged several third-party legal counsels and advisory firms, and Lee Health management provided factual information, to assist the Board and Kaufman Hall in the evaluation of Conversion;

DRAFT - AFFIRMATIVE

WHEREAS, on February 21, 2024, Kaufman Hall delivered its Conversion evaluation report (the “Report”) to the Board, which states: “[t]o the extent the Lee Health Board and management believe the system can realize the value of prospective strategic opportunities and increase its competitive position at a level that surpasses the near-term net cost increase outlined herein, and more effectively delivery on its mission – to be a trusted partner, empowering healthier lives through care and compassion – we recommend that Lee Health continue with the conversion process”;

WHEREAS, the Amendment to the Special Act requires that the Board, no later than 120 days after receipt of the final Report, must determine, by majority vote, whether the interests of Lee County residents are best served by Conversion;

WHEREAS, if the Board determines that the interests of Lee County residents are best served by Conversion, Lee Health shall negotiate and draft a proposed agreement with the Lee County Board of County Commissioners before Conversion may occur;

WHEREAS, throughout the Conversion evaluation process, the Board has sought input and feedback from the community and other interested stakeholders, both internal and external to Lee Health, including through numerous team member town halls, community town halls in each of the five Board member districts, two public hearings, and ongoing updates to the media and on the Lee Health website, among others;

WHEREAS, the Board has conducted no fewer than ten publicly-noticed Board workshops, special meetings, and/or regular meetings at which the Board has sought feedback and received advice from legal counsel, both internal and external to Lee Health, third-party consultants, and Lee Health leadership regarding the potential Conversion;

WHEREAS, the Lee Health leadership team, comprising sixty senior leaders, has reviewed and made presentations to the Board regarding the potential impacts of Conversion, including a recommendation that Conversion is a strategic move towards securing the Health System’s future, its safety-net mission, and maximizing its impact on the communities it serves;

WHEREAS, through these and other actions, the Board has conducted a diligent review process consistent with its fiduciary duties of loyalty, care, and obedience to Lee Health and its mission;

NOW, THEREFORE, BE IT RESOLVED THAT:

Based upon the Board’s evaluation of the benefits to the residents of Lee County of Conversion, including the Board’s review and consideration of the foregoing, the Board determines that the best interests of Lee County residents are best served by Conversion. The Board authorizes the President/Chief Executive Officer of Lee Health and his designees to take all reasonable steps to negotiate and draft a proposed agreement with Lee County in accordance with the requirements of the Amendment to the Special Act, which agreement shall be subject to final approval by the Board and the Lee County Board of County Commissioners no later than 120 days from the effective date of this Resolution, as provided for in the Amendment to the Special Act.

THIS RESOLUTION has been adopted by the Board effective [DATE].

Board Chair

LEE MEMORIAL HEALTH SYSTEM BOARD OF DIRECTORS

RESOLUTION:

Conversion Evaluation – Discernment Phase Determination

The Board of Directors (“Board”) of Lee Memorial Health System (“Lee Health”), at a public meeting held on _____, adopts the following resolution concerning the Board’s determination as to whether the interests of Lee County residents are best served by converting to a nonprofit entity:

WHEREAS, Lee Health 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 Lee Health’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 district in Lee County by special act, Chapter 63-1552, Laws of Florida, and in 1968 Lee Health assumed operation of Lee Memorial Hospital;

WHEREAS, Lee Health has grown from a single hospital to a vibrant, full-service, multi-hospital health system operating in Lee County, Florida (the “Health System”);

WHEREAS, the health care industry has changed significantly since Lee Health assumed operation of Lee Memorial Hospital in 1968;

WHEREAS, even as the health care industry and the Lee County community evolve, the Board embraces its ongoing fiduciary duties of loyalty, care, and obedience to Lee Health and its mission as it endeavors to protect and strengthen the organization;

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 as a governmental entity may not be an effective or beneficial governmental function;

WHEREAS, the Amendment to the Special Act authorizes Lee Health to conduct an evaluation of the benefits to the residents of Lee County of converting Lee Health to a community-focused, non-governmental Florida nonprofit corporation (“Conversion”);

WHEREAS, on August 31, 2023, the Board authorized an evaluation of the benefits to the residents of Lee County of Conversion, consistent with the Amendment to the Special Act and its fiduciary duties to Lee Health and its mission;

WHEREAS, at the Board’s direction, Kaufman, Hall & Associates, LLC (“Kaufman Hall”), an independent entity with at least five years of experience conducting comparable evaluations of hospital organizations similar in size and function to the Health System, conducted an evaluation of Conversion according to applicable industry best practices;

WHEREAS, Lee Health engaged several third-party legal counsels and advisory firms, and Lee Health management provided factual information, to assist the Board and Kaufman Hall in the evaluation of Conversion;

DRAFT - NEGATIVE

WHEREAS, on February 21, 2024, Kaufman Hall delivered its Conversion evaluation report (the “Report”) to the Board, which states: “[t]o the extent the Lee Health Board and management believe the system can realize the value of prospective strategic opportunities and increase its competitive position at a level that surpasses the near-term net cost increase outlined herein, and more effectively delivery on its mission – to be a trusted partner, empowering healthier lives through care and compassion – we recommend that Lee Health continue with the conversion process”;

WHEREAS, the Amendment to the Special Act requires that the Board, no later than 120 days after receipt of the final Report, must determine, by majority vote, whether the interests of Lee County residents are best served by Conversion;

WHEREAS, if the Board determines that the interests of Lee County residents are best served by Conversion, Lee Health shall negotiate and draft a proposed agreement with the Lee County Board of County Commissioners before Conversion may occur;

WHEREAS, throughout the Conversion evaluation process, the Board has sought input and feedback from the community and other interested stakeholders, both internal and external to Lee Health, including through numerous team member town halls, community town halls in each of the five Board member districts, two public hearings, and ongoing updates to the media and on the Lee Health website, among others;

WHEREAS, the Board has conducted no fewer than ten publicly-noticed Board workshops, special meetings, and/or regular meetings at which the Board has sought feedback and received advice from legal counsel, both internal and external to Lee Health, third-party consultants, and Lee Health leadership regarding the potential Conversion;

WHEREAS, the Lee Health leadership team, comprising sixty senior leaders, has reviewed and made presentations to the Board regarding the potential impacts of Conversion, including a recommendation that Conversion is a strategic move towards securing the Health System’s future, its safety-net mission, and maximizing its impact on the communities it serves;

WHEREAS, through these and other actions, the Board has conducted a diligent review process consistent with its fiduciary duties of loyalty, care, and obedience to Lee Health and its mission;

NOW, THEREFORE, BE IT RESOLVED THAT:

Based upon the Board’s evaluation of the benefits to the residents of Lee County of Conversion, including the Board’s review and consideration of the foregoing, the Board determines that the best interests of Lee County residents are not best served by Conversion. Lee Memorial Health System shall continue to exist as an independent special district as provided for in the Amendment to the Special Act.

THIS RESOLUTION has been adopted by the Board effective [DATE].

Board Chair

Adjourn

Date of Next Meeting
May 30, 2024 at 1:00 PM

Board of Directors Meeting
Location:

Gulf Coast Medical Center Board Room
13685 Doctor's Way
Fort Myers, FL 33912

Teleconference: Dial-In # 1 415 655 0002
Access Code 2303 571 3124