

Ordinance No .FCO 2017-21

AN ORDINANCE OF THE COUNTY COMMISSIONERS
ESTABLISHING THE FLOYD COUNTY HOSPITAL SALE
PROCEEDS FOUNDATION

WHEREAS, Floyd County (the "County") has sold its hospital and the proceeds exceeded \$50,000,000; and

WHEREAS, pursuant to IC 36-1-14-1, et seq., the Board of County Commissioners (the "Board") desires to establish a charitable nonprofit foundation for the benefit of the County; and

WHEREAS, the Board has reviewed the proposed Floyd County Hospital Sale Proceeds Foundation (the "Foundation") document which sets forth the operational limits and procedures for this Foundation, as set forth in Exhibit A (the "Foundation Document") attached hereto; and

WHEREAS, the Board and County Council are required to adopt substantially similar ordinances to establish the Foundation; and

WHEREAS, the Board desires to adopt the Ordinance and the Foundation Document to establish such Foundation.

THEREFORE BE IT ORDAINED by the Board of County Commissioners of the County of Floyd that:

Section 1 This Board determines that it is of public benefit and use to establish a charitable nonprofit foundation for the deposit of a portion of the hospital proceeds.

Section 2 This Board adopts IC 36-1-14-2 and IC 36-1-14-3 as the controlling statutory provisions under which the Foundation will be established.

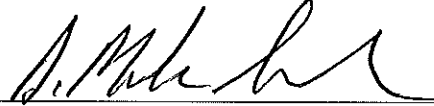
Section 3 This Board approves and adopts the Foundation Document as the basic charter for the Floyd County Hospital Sale Proceeds Foundation, as set forth in Exhibit A.

Section 4 This Board shall designate on an annual basis the amount of hospital sale proceeds that are deposited to the Foundation.

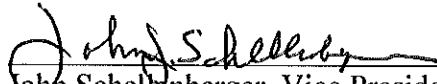
Section 5 This Ordinance takes effect upon passage.

Adopted and passed this 3rd day of October, 2017.

BOARD OF COMMISSIONERS, COUNTY OF FLOYD



D. Mark Seabrook, President

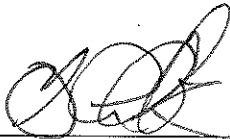


John Schellenberger, Vice President



Billy Stewart, Member

Attest:



Scott Clark, Auditor

**FLOYD COUNTY HOSPITAL SALE
PROCEEDS FOUNDATION**

This Instrument shall govern the conduct of the affairs of the Floyd County Hospital Sale Proceeds Foundation (the "Foundation"), if and when any money or property is transferred to the Foundation in accordance with Ind. Code §36-1-14-3(g)(1).

1. **Governing Law.** The affairs of the Foundation shall be conducted through a Board of Trustees as required by Ind. Code §36-1-14-3 and Ind. Code §36-1-14-2, as enacted as of the date hereof and as the same may be hereafter amended in a manner made applicable to the Foundation, and pursuant to the terms of this Instrument, as in effect from time to time.
2. **Board of Trustees.** The Board of Trustees shall be comprised of the members of the Floyd County's (the "County") legislative body (the "Legislative Body") and fiscal body (the "Fiscal Body") as duly qualified public officials. Pursuant to IC 36-1-2-9, "Legislative body" means the board of county commissioners. Pursuant to IC 36-1-2-6, "Fiscal body" means the county council.
3. **Meetings of the Trustees.** Meetings of the Trustees required by Ind. Code §36-1-14-3(g) shall be held in conjunction with the regular meetings of the Fiscal Body held in February, May, August and November, unless the Trustees, acting in accordance with Section 2(b), shall determine a different date or place. A special meeting of the Board of Trustees may be called by the President or by request of two (2) or more Trustees.
4. **Election.** The Board of Trustees shall, annually, elect officers for the offices of President, Vice President and Secretary.
5. **Term.** The term of each Trustee shall coincide with the individual's term of office as a qualified member of the County's Legislative Body or Fiscal Body.

6. **Notice of Meetings**. Notice of meetings shall be provided in accordance with the Indiana Open Door Law pursuant to IC 5-14-1, et seq.
7. **Quorum**. A quorum of the Board of Trustees at any regular or called meeting shall be a majority of the duly qualified members of the Board of Trustees.
8. **Decisions of the Trustees**. Any decision requiring the approval of the Board of Trustees of the Foundation shall be made in a manner described in this Section 8.
 - (a) The approval by the Trustees of any expenditure or transfer of money described in a majority vote of the Trustees shall also, within the vote of the Trustees, require the affirmative vote of a majority of the Trustees representing each of the following:
 1. the Fiscal Body and
 2. the Legislative Body.
 - (b) The approval by the Trustees of any matters requiring approval of the Trustees not described in Section 8(a), including, but not limited to, the expenditure or transfer of money not described in Ind. Code §36-1-14-3(g)(2), the approval of any contract or policy statement required by Ind. Code §36-1-14-3(a), and the selection of the non-voting advisors described in Ind. Code §36-1-14-3(g)(6), shall require the adoption by a majority of the qualified Trustees, providing that at least two (2) members of each of the Legislative Body and Fiscal Body are present.
9. **Principal Deposit**. The principal amount of the Foundation (“Principal Deposit”) should be comprised of the 1) donation by the County; 2) donations, gifts or money received from private sources; or 3) excess earnings (defined as investment earnings that exceed 5% of the beginning principal balance) in a calendar year. The principal of the Foundation shall be deposited with a Trust Company or Investment Firm under a trust or investment agreement. The Principal

Deposit may not be spent unless unanimously approved by the Trustees at a duly called meeting of the Trustees.

10. **Investment Income.** The investment income may be held by a Trust Company, deposited with a bank or deposited with the County Treasurer. Deposits with the County Treasurer will be held in a restricted fund unless otherwise determined by the Board of Trustees. Investment income may only be used for the purposes of the County. Investment income may be pledged to expenditures approved by the Board of Trustees, including debt service on obligations issued by the County. Expenditures of Investment Income shall be limited to investment earnings up to 5% of the beginning balance of the Principal Deposit at the beginning of the calendar year.
11. **Trust Company.** The Board of Trustees shall designate a trust company for the deposit and security of the Principal Deposit of the Foundation funds and any balance of investment income that has not been expended or transferred to the county. The selection of the Trust Company shall be based on the stability of the institution, handling of similarly sized trust deposits, fees and experience.
12. **Investments.** The Foundation shall have the right to retain all or any part of any securities or property acquired by it in whatever manner, and to invest, sell and reinvest any securities or property held by it, as determined by the Board of Trustees, except to the extent that responsibility for making such determination is delegated to a committee of the Board of Trustees or to a third party investment advisor. Investments may be made in any legal or marketable securities as provided by IC 36-1-14-3(e)(1) after the adoption of an investment policy statement as provided by IC 36-1-14-3(d). Investments shall be limited so as not to exceed 55% allocated to equity securities and rebalanced from time to time as set forth in IC 36-1-14-3(f).

13. **Investment Advisor.** The Board of Trustees shall contract with a competent investment advisor (“Investment Advisor”) to advise the Board of Trustees as to investment strategies and procedures. The selection of the Investment Advisor shall be made after solicitation through a request for proposals submitted to three (3) or more entities conducting services of an investment advisor service based upon those services to similarly sized trusts.
14. **Contracts.** The Board of Directors may authorize any officer or agent to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Foundation, and such authority may be general or confined to a specific instance; and unless so authorized by the Board of Directors, no officer, agent or employee shall have any power or authority to bind the Foundation by any contract or engagement, or to pledge its credit or render it liable pecuniarily for any purpose or to any amount.
15. **Compliance with Tax Laws.** The following provisions shall apply to the conduct of the affairs of the Foundation.
- (a) **Operation.** The Foundation shall be operated exclusively for charitable nonprofit purposes.
 - (b) **Restrictions on the Use of Foundation Property.** No part of the net earnings of this Foundation shall inure to the benefit of any private person or any other individual in contravention of Section 501(c)(3) of the Internal Revenue Code (the “Code”) as may be in effect from time to time. Within the meaning of Section 501(c)(3) of the Code, no substantial part of the Foundation’s activities shall consist of carrying on propaganda, or otherwise attempting to influence legislation. The Foundation shall not participate in or intervene in any political campaign on behalf of or in opposition to any candidate for public office (including the publishing or

distributing of statements). Notwithstanding any other provision hereof to the contrary, (i) no power given to the Trustees or accorded to Trustees generally shall be construed to enable the Trustees or any other person to purchase, exchange, or otherwise deal with or dispose of the Foundation property, other than in furtherance of its charitable purposes as set forth in Section 4(a) hereof, for less than an adequate consideration in money or money's worth or shall permit the Trustees or any contributor to the Foundation to borrow any Foundation property, directly or indirectly; (ii) no person other than the Trustees shall have or exercise the power to direct the voting of any stock or other securities of the Foundation, to control the investment of the Foundation either by directing investments or reinvestments or by vetoing proposed investments or reinvestments, or to reacquire or exchange any Foundation property by substituting other property of an equivalent value; and (iii) the Trustees shall not use the Foundation property to pay premiums on insurance on the life of any Trustee or any contributor to this Foundation or for his or her spouse, or to provide support or maintenance for any person whom any Trustee or any contributor to this Foundation is legally obligated to support. Any restriction or declaration required by the Code to be contained in the organizing documents of a Foundation exempt from tax under Section 501(c)(3) of the Code that does not appear herein is hereby incorporated by reference.

- (c) **Private Foundation Restrictions.** Notwithstanding anything to the contrary contained in this Instrument, in the event and if for any reason the Foundation is classified as a "private foundation," as that term is defined in Section 509(a) of the Code, then and in such event and in order to comply with Section 508(e) of the

Code and for so long as the Foundation may be deemed to be a “private foundation,” the powers and activities of the Foundation in accomplishing the foregoing purposes shall be specifically subject to the following requirements, restrictions and limitations:

1. **Prohibition Against Self-Dealing.** The Foundation shall engage in no act of self-dealing as defined in Section 4941(d) of the Code.
2. **Minimum Distribution Requirements.** The Foundation shall distribute so much of its income, and, if necessary, its principal, for each taxable year, at such time and in such manner as to prevent the imposition of the tax for failure to make minimum distributions imposed by Section 4942 of the Code.
3. **Retention of Excess Business Holdings.** The Foundation shall retain no excess business holdings as defined in Section 4943(c) of the Code.
4. **Prohibition Against Jeopardizing Investments.** The Foundation shall make no jeopardizing investment that will subject it to tax under Section 4944 of the Code.
5. **Prohibition Against Taxable Expenditures.** The Foundation shall make no taxable expenditures as defined in Section 4945(d) of the Code.

16. **Name of the Foundation.** The name of the Foundation shall be the Floyd County Hospital Sale Proceeds Foundation.

17. **Adoption and Amendment.** This Instrument shall not be effective until the adoption by the Fiscal Body and the Legislative Body of substantially similar ordinances establishing the Foundation and adopting the terms of this Instrument. This Instrument may be amended solely by the adoption by the Fiscal Body and the Legislative Body of substantially identical ordinances amending the terms of this Instrument.