

ORDINANCE NO. FCO 2018-8

AN ORDINANCE TO ESTABLISH THE
FLOYD COUNTY LEGACY FOUNDATION

WHEREAS, Floyd County (the "County") has sold its hospital and the proceeds exceeded \$50,000,000.00; and

WHEREAS, pursuant to IC 36-1-14-5, et seq., the Floyd County Commissioners desire to establish a county Legal Foundation for the benefit of the County; and

WHEREAS, the Floyd County Commissioners have reviewed the proposed Floyd County Legacy Foundation (the "Legacy Foundation") document which sets forth the operational limits and procedures for this Legacy Foundation, as set forth in Exhibit A (the "Legacy Foundation Document") attached hereto and incorporated herein; and

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

WHEREAS, the Floyd County Commissioners desire to adopt the Ordinance and the Legacy Foundation Document to establish such Legacy Foundation.

THEREFORE BE IT ORDAINED by the Floyd County Commissioners that:

Section 1 The Floyd County Commissioners determine that it is of public benefit and use to establish a charitable nonprofit Legacy Foundation for the deposit of a portion of the hospital proceeds.

Section 2 The Floyd County Commissioners adopt IC 36-1-14-5 as the controlling statutory provisions under which the Legacy Foundation will be established.

Section 3 The Floyd County Commissioners approve and adopt the Legacy Foundation Document as the basic charter for the Floyd County Hospital Sale Proceeds Legacy Foundation, as set forth in Exhibit A.

Section 4 The Floyd County Commissioners and the Floyd County Council shall designate by resolution on an annual basis the amount of hospital proceeds that are deposited to the Legacy Foundation.

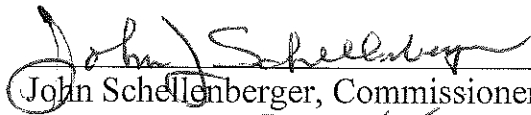
Section 5 This Ordinance takes effect upon passage.

Adopted and passed this 7 day of August, 2018.

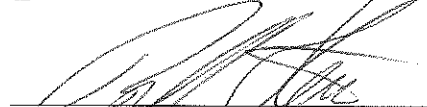
BOARD OF COMMISSIONERS,
COUNTY OF FLOYD



D. Mark Seabrook, President



John Schellenberger, Commissioner



Billy Stewart, Commissioner

Attest:

Scott Clark, Auditor

Exhibit A

FLOYD COUNTY LEGACY FOUNDATION

This Instrument shall govern the conduct of the affairs of the Floyd County Legacy Foundation (the "Foundation"), if and when any money or property is transferred to the Foundation in accordance with Ind. Code §36-1-14-5.

1. **Governing Law.** The affairs of the Foundation shall be conducted through a Board of Trustees as required by Ind. Code §36-1-14-5, 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 following five (5) members:
 - a. One (1) member of the county council, approved by the county council and appointed by the president of the county council.
 - b. One (1) member of the county executive, approved by the county executive and appointed by the president of the county executive.
 - c. One (1) individual who has at least five (5) years of experience as a certified public accountant, a financial adviser, a banker, or an investment manager, approved by the county council and appointed by the president of the county council.
 - d. One (1) individual who has at least five (5) years of experience as a certified public accountant, a financial adviser, a banker, or an investment manager, approved by the county executive and appointed by the president of the county executive.
 - e. The county treasurer.
3. **Meetings of the Trustees.** Meetings of the Trustees required by Ind. Code §36-1-14-5(j)(7) 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 Ind. Code §36-1-14-5(j)(7), 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 three (3) or more Trustees.

4. **Election.** The Board of Trustees shall, annually, elect officers for the offices of Vice Chairperson and Secretary. Pursuant to Ind. Code §36-1-14-5(g), the county treasurer shall serve as the chairperson of the Board of Trustees.
5. **Term.** The term of each elected trustee shall coincide with the individual's term of office as a qualified member of the County's Legislative Body, Fiscal Body, and Treasurer. Non-elected members of the Board of Trustees shall be appointed pursuant to Ind. Code §36-1-14-5(f)(3) and (4) during the annual organizational meetings respectively held by the County's Legislative Body and Fiscal Body.
6. **Notice of Meetings.** Notice of meetings shall be provided in accordance with the Indiana Open Door Law pursuant to Ind. Code §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 County Council and County Commissioners.** The County Council and the County Commissioners shall perform the following actions:
 - a. Formulate an investment policy that ensures that money held by the foundation is invested in accordance with Ind. Code §30-2-12.
 - b. Establish a policy pursuant to Ind. Code §36-1-14-5(i)(2) concerning distributions of income and principal from the foundation. "Policy" shall be broadly interpreted to include use of the funds as jointly determined by resolution of the Floyd County Commissioners and the Floyd County Council.

- c. Determine the amount of the proceeds from the sale of the county hospital that shall be transferred by the county fiscal officer to the Legacy Foundation.
 - d. Establish a policy pursuant to Ind. Code §36-1-14-5(j)(3), *et seq.* to set the annual rate of spending from the foundation.
 - e. If the county council and county executive wish to access an amount from the principal amount of the donation that is more than the amount available under clause Ind. Code §36-1-14-5(j)(5)(A), but not more than fifty percent (50%) of the principal amount of the donation, the board shall proceed as follows:
 - i. Five (5) of the seven (7) members of the county council and a majority vote of the county executive at a joint meeting of the county council and the county executive must vote in favor of accessing the principal amount of the donation. The votes of the county council and the county executive at the joint meeting must occur on two (2) occasions as provided in item (ii).
 - ii. The votes described in item (i) must occur on two (2) occasions that are at least one (1) year apart but not more than two (2) years apart.
 - iii. The votes described in item (i) must be based on identical language in an ordinance that sets forth the approved use of the funds accessed from the principal amount of the donation. If the language in an ordinance under this clause is different from the language used in the first vote, the process to vote on accessing the principal amount of the donation must start over.
9. **Decisions of the Trustees.** The Board of Trustees shall contract with a financial institution eligible to receive public funds of a political subdivision under Ind. Code §5-13-8-1 to assist the Board of Trustees in its investment program. Additional decisions requiring the approval

of the Board of Trustees of the Foundation shall be made in a manner herein-below described in this Section 9.

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 the Trustees representing each of the following:

- i. the Fiscal Body and
- ii. the Legislative Body.

10. **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. The principal of the Foundation shall be deposited with an Investment Firm under an investment agreement. The Principal Deposit may only be spent pursuant to the requirements of Ind. Code §36-1-14-5(j)(3), (j)(4), and (j)(5).

11. **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. Further, funds shall be distributed as directed by resolution of the Floyd County Commissioners and the Floyd County Council by resolution pursuant to 8(b) excepting those funds restricted by contractual obligation of the Board of Trustees as described in IC 36-1-14-5(g).

12. **Investment Firm.** The Investment Firm 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 Investment Firm shall be based on the stability of the institution, handling of similarly sized trust deposits, fees and experience.
13. **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 after the adoption of an investment policy statement as provided by Ind. Code §36-1-14-5(i).
14. **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.
15. **Contracts.** The Board of Trustees 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 Trustees, 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 pecuniary for any purpose or to any amount. The Board shall comply with the procedures described in IC 36-1-21 respecting contracting with the Foundation.

16.

17. **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:

- i. **Prohibition Against Self-Dealing.** The Foundation shall engage in no act of self-dealing as defined in Section 4941(d) of the Code.
- ii. **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.
- iii. **Retention of Excess Business Holdings.** The Foundation shall retain no excess business holdings as defined in Section 4943(c) of the Code.
- iv. **Prohibition Against Jeopardizing Investments.** The Foundation shall make no jeopardizing investment that will subject it to tax under Section 4944 of the Code.

v. **Prohibition Against Taxable Expenditures.** The Foundation shall make no taxable expenditures as defined in Section 4945(d) of the Code.

18. **Name of the Foundation.** The name of the Foundation shall be the Floyd County Legacy Foundation.

19. **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 pursuant to the procedure described in 8(e)(i), (ii), and (iii).