

RESOLUTION NO. FCR 2017-1

A RESOLUTION OF THE FLOYD COUNTY BOARD OF COMMISSIONERS
ESTABLISHING THE FLOYD MEMORIAL FOUNDATION ENDOWMENT FOR THE
HEALTHCARE ALLOCATION PORTION OF THE PROCEEDS FROM THE SALE OF
FLOYD MEMORIAL HOSPITAL AND HEATHCARE SYSTEMS

WHEREAS, Floyd County, Indiana (“Floyd County”) established and heretofore owned Floyd Memorial Hospital and Health Systems (“Hospital”); and

WHEREAS, the Floyd County Board of Commissioners and the Floyd County Council (collectively “County Officials”) and the Hospital’s Board, pursuant to IC 16-22-3 have previously agreed to transfer the Hospital’s assets to Baptist Health Network pursuant to an Asset Purchase Agreement dated June 28, 2016 (the “APA”); and

WHEREAS, Floyd County received a substantial amount of proceeds from the sale of the Hospital (the “Proceeds”) in an amount sufficient to qualify for application of IC 5-13-9.3 et seq.; and

WHEREAS, the APA provides that a portion of the proceeds Floyd County receives are a Healthcare Allocation which shall be paid first to Floyd County and then forwarded to the Floyd Memorial Foundation (“Foundation”); and

WHEREAS, the APA requires that the Foundation shall, as a condition of its receipt of the Healthcare Allocation, agree to certain terms in writing; and

WHEREAS, Floyd County desires to protect and restrict the use of the Proceeds pursuant to the terms of the APA and I.C. § 36-1-14-1; and

WHEREAS, the Foundation agrees to hold the Healthcare Allocation as a permanent endowment pursuant to I.C. § 36-1-14-1; and

WHEREAS, the Foundation is an Indiana nonprofit corporation exempt from federal income taxes under Internal Revenue Code (“Code”) § 501(c)(3), and accordingly an appropriate institution within which to establish such a charitable endowment; and

WHEREAS, the Foundation is willing and able to create, hold and administer such an endowment subject to the terms and conditions contained herein, in the APA and in the Fund Agreement.

NOW THEREFORE, BE IT RESOLVED BY THE Floyd County Board of Commissioners, Indiana, that:

Section 1. Proceeds. On September 30, 2016, Floyd County received \$75,000,000 from the transfer of the Hospital’s assets to Baptist Health Network pursuant to the APA. The County will receive ten (10) additional installment payments in January of each year following the

closing which will cumulatively total \$61,000,000, plus interest ("Financed Purchase Price"). 7.68% of the Financed Purchase Price shall be considered the Healthcare Allocation.


Section 2. Deposit and Transfer of the Healthcare Allocation. The Healthcare Allocation shall be placed into the Hospital Fund and then transferred to the Charitable Proceeds Trust Fund upon receipt. After placed into the Charitable Proceeds Trust Fund, the Healthcare Allocation shall be donated to the Foundation pursuant to this Resolution, the Hospital Foundation Ordinance, and the APA.

Section 3. Portion of Proceeds Donated to Community Foundation. County Officials, pursuant to I.C. § 36-1-14-1 and the APA, agree to donate a portion of the Financed Purchase Price to the Foundation, which shall be placed in a permanent endowment ("Endowment"). The Foundation shall hold the donation as a permanent endowment pursuant to I.C. 36-1-14-1. The Endowment shall further be used in accordance with the terms of the APA, supporting community healthcare needs in Floyd County, Clark County, Crawford County, Harrison County, Scott County, and Washington County. Pursuant to the APA, the County is to receive the Financed Purchase Price over a period of ten (10) years. The County shall retain 92.32% of the Financed Purchase Price and the remaining 7.68% shall be given to the Foundation. If the County receives a lump sum of the remaining Proceeds as permitted by the APA, the Foundation shall receive 7.68% of the lump sum amount.

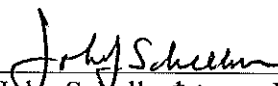
Section 4. Authorization of a Fund Agreement. The County Officials and the Foundation desire to enter into a Fund Agreement between the parties that memorialize their decisions and the parameters of the Fund Agreement. The Fund Agreement, substantially in the form of is attached and incorporated by reference as Exhibit A. The County Officials hereby authorize their respective presidents or vice-presidents to execute the Fund Agreement on behalf of the Council and Commissioners.

ADOPTED AND PASSED this 7th February day of January, 2017.

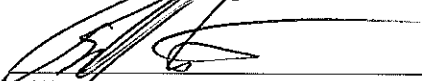
BOARD OF COMMISSIONERS,
FLOYD COUNTY, INDIANA



D. Mark Seabrook, President



John Schellenberger, Member



Billy Stewart, Member

Attest:



Scott Clark, Auditor
DMS 4610960v1

FUND AGREEMENT

THIS AGREEMENT is made and entered into on December _____, 2016, by and among the Floyd County Board of Commissioners, the Floyd County Council (collectively "Floyd County") and the Floyd Memorial Foundation ("Foundation").

WITNESSETH:

WHEREAS, Floyd County entered into an Asset Purchase Agreement ("APA") dated June 29, 2016, with the Floyd Memorial Hospital and Health Services, the Floyd Memorial Medical Group, FMMG, LLC, FMMG Pain Mgmt., LLC, Harrison Family Medicine, LLC, (collectively "Floyd Memorial"), and Baptist Healthcare System, Inc. ("Baptist"), for the transfer of Floyd Memorial's assets to Baptist; and

WHEREAS, Floyd County received a significant amount of proceeds from the transfer of assets to Baptist; and

WHEREAS, Floyd County has agreed to use a portion of the proceeds it receives as a Healthcare Allocation, and that such allocation shall be paid to Floyd County and then transferred this portion of its proceeds to the Foundation; and

WHEREAS, the APA requires that the Foundation shall, as a condition of its receipt of the Healthcare Allocation, agree to certain terms in writing; and

WHEREAS, Floyd County desires to protect and restrict the use of the Proceeds pursuant to the terms of the APA and I.C. § 36-1-14-1; and

WHEREAS, the Foundation agrees to hold the Healthcare Allocation as a permanent endowment pursuant to I.C. § 36-1-14-1; and

WHEREAS, the Foundation is an Indiana nonprofit corporation exempt from federal income taxes under Internal Revenue Code ("Code") § 501(c)(3) and an appropriate institution within which to establish such a charitable endowment; and

WHEREAS, the Foundation is willing and able to create, hold and administer such an endowment subject to the terms and conditions contained herein.

NOW THEREFORE, the parties agree as follows:

I. GENERAL PROVISIONS

A. Gift and Fund Designation. At the time of transfer of any assets used to create this fund, Floyd County hereby transfers to the Foundation all right, title and interest in and to the property described on the attached Exhibit A to establish this Fund, a designated endowment fund to be known as the **Floyd County Healthcare Fund** (the "Fund"), and to all future income and appreciation of the Fund, and to all future donations to the Fund. Subject to the right of the

Foundation to reject any particular gift, from time to time the Foundation may accept additional irrevocable gifts of property from Floyd County or from any other source, whether an individual, corporation, trust, estate or organization, to be added to the Fund, all subject to the provisions hereof. All gifts, bequests and devises to this Fund shall be irrevocable once accepted by the Foundation. Floyd County reserves no rights other than as described in this Agreement to the initial assets of the Fund, future income and appreciation of the Fund, or any future donations to the Fund, subject to Section VI.B below.

B. Purpose. The primary purpose of the Fund shall be to initiate, promote, organize, sponsor, contribute to and generally further religious, charitable, scientific and educational activities, undertakings and institutions as contained in this Agreement. Specifically, distributions from this Fund shall be in accordance with the APA and be used to support community healthcare needs in Floyd County, Clark County, Crawford County, Harrison County, Scott County and Washington County.

II. ADMINISTRATIVE PROVISIONS

Notwithstanding anything herein to the contrary, the Foundation shall hold and administer the Fund, and all contributions and assets allocable to the Fund, subject to the provisions of applicable law and the Foundation's Articles of Incorporation and Bylaws, as amended from time to time and on the following terms and conditions:

A. No Material Restrictions. The Fund will be administered by the Foundation as a Designated Endowment Fund and nothing contained in this Agreement shall be construed as imposing any material restriction or condition that prevents the Foundation from freely and effectively employing the income derived from the Fund's current assets in furtherance of the Foundation's charitable purposes and those purposes stated for this Fund.

B. Authority. The Foundation shall have the ultimate authority and control over all property in the Fund, and the income derived from it, subject to the terms of this Agreement, applicable law, and the Foundation's Articles of Incorporation and Bylaws as they may be amended from time to time.

C. Not a Separate Trust. All money and property in the Fund shall be held as general assets of the Foundation, held by it in its corporate capacity, and shall not be segregated as trust property of a separate trust or be deemed a trust fund held by it in a trustee capacity.

D. Component Fund. This Fund is intended to be, and shall be administered as a component part of the Foundation under United States Treasury Regulation Section 1.170A-9(f)(11).

E. Variance Power. This Fund is specifically subject to the powers of the Foundation's Board as set forth in the Articles of Incorporation and Bylaws of the Foundation including the power to modify any restriction or condition of the Fund if such restriction or condition becomes unnecessary, obsolete, incapable of fulfillment, or inconsistent with the charitable needs of the community served by the Foundation, with any modification being as consistent as reasonably possible with the charitable intent of the County and Indiana law, including specifically, I.C. §36-

1-14-1. The Foundation shall provide Notice of any modification to the Fund to the Floyd County with such Notice to be filed with the Floyd County Auditor.

F. Power to Modify. The Board shall oversee distributions from the Fund and shall have all powers of modification and removal specified in United States Treasury Regulation section 1.170A-9(f)(11)(v)(B). The Foundation shall have the authority to modify this Agreement from time to time as may be necessary in order to comply with applicable laws or regulations (or any changes to applicable laws or regulations) that govern such funds. The Foundation shall provide Notice of any proposed modification to the Fund to the Floyd County with such Notice to be filed with the Floyd County Auditor.

G. Conditions for Acceptance of Gifts. Floyd County agrees and acknowledges that the establishment of the Fund herein created is made in recognition of, and subject at all times to, applicable law and the terms and conditions of the Articles of Incorporation and Bylaws of the Foundation as from time to time amended, including but not by way of limitations, provisions for:

- (a) Presumption of Floyd County's' intent;
- (b) Variance from Floyd County's' direction; and
- (c) Amendments.

H. Continuity of the Fund. The Fund shall continue so long as assets are available in the Fund and the purposes of the Fund can be served by its continuation, subject to Section VI.B below. If the Fund is terminated, the Foundation shall use any remaining assets in the Fund exclusively for charitable or other exempt purposes that:

- (a) most nearly approximate, in the good faith opinion of the Foundation's Board, the original purpose of the Fund, consistent with Indiana law and the purposes of the County; and
- (b) are consistent with I.C. § 36-1-14-1.

I. Accounting. The receipts and disbursements of this Fund shall be accounted for separately and apart from those of other gifts to the Foundation. The Foundation shall keep accurate financial and other records related to the administration of the Fund. The Foundation shall make available to Floyd County a copy of any annual examination of the finances of the Foundation as reported by independent certified public accountants. The Foundation shall annually present its written report on the activity of the Fund to a joint meeting of the Floyd County Board of Commissioners and County Council by January 30, describing in detail the use of the Healthcare Allocation for the prior year and any additional information that Floyd County may reasonably request.

J. Publicity. Unless directed otherwise by the Floyd County in writing, the Fund will be included by name in the Annual Report of the Foundation in keeping with the reporting on other similar funds within the Foundation. The Fund may be included by name in additional Foundation marketing materials from time to time.

K. Governing Law. This Agreement and all related proceedings shall be governed by and interpreted under the laws of the State of Indiana. Any action with respect to this Agreement shall be brought in or venued to a court of competent jurisdiction in Indiana.

III. DISTRIBUTIONS

A. Calculation of Distributable Amount. The Foundation shall distribute the income from the Fund pursuant to I.C. § 36-1-14-1, which such distribution shall not exceed 5% of the average gross fund market value based on a rolling twelve (12) month-period calculated each year as of September 30 ("Distributable Amount"). Until the ability to establish a spend rate is established, only the income from the Fund shall be distributed as set forth above in this section. At such time as an Indiana Court issues an order permitting the establishment of a spend rate to be applied to the Fund, or the Indiana General Assembly amends the Indiana Code to permit a spend rate to be applied to the Fund, the Foundation will distribute the Distributable Amount each year as calculated by the Spend Rate. Upon receiving the ability to establish a spend rate of up to 5% (the "Spend Rate") from either a court order or legislative change, the Distributable Amount will not be restricted to the income but shall still not exceed 5% multiplied by the average gross market value of the Fund over a rolling twelve (12) month period calculated each year as of September 30, pursuant to the Foundation's Spending Policy.

B. Goal of the Distributable Amount Calculation. The ordinary income, capital appreciation (realized and unrealized), and principal (both historic dollar value and any principal contributions, accumulations, additions, or reinvestments) allocable to the Fund, net of the fees and expenses set forth in this Agreement, may be committed, granted or expended in accordance with the then current spending policies of the Foundation, solely for purposes described in this Agreement. The Foundation's distribution (or spending) policy, as applied to endowments such as the Fund, shall be designed to take into account total return concepts of investment and spending, with the goal of preserving the real spending power of endowments over time while balancing the need for consistent spending to support the charitable and similar exempt purposes of such endowments. Accordingly, the Foundation may from time to time recommend changes to the Distributable Amount as calculated above.

C. Additional Restricted Gifts. If any gifts to the Foundation for the purposes of the Fund are received and accepted subject to a Floyd County's conditions or restrictions as to the use of the gift or the income therefrom, said conditions or restrictions will be honored, subject, however, to the authority of the Foundation's Board to vary the terms of any gift if continued adherence to any condition or restriction is in the judgment of the Foundation's Board of Directors unnecessary, incapable of fulfillment or inconsistent with the charitable needs of the community served by the Foundation, with any modification being as consistent as reasonably possible with the charitable intent of the County and Indiana law.

D. No Distributions Contrary to Charitable Purpose. No distribution shall be made from the Fund to any individual or entity if such distribution will in the judgment of the Foundation endanger the Foundation's Code section 501(c)(3) status or result in the imposition of any excise tax, penalty, or other tax, fine, or assessment under the Code.

E. Distributions in the Name of the Fund. All distributions from the Fund will be made in the name of the Fund.

F. Specific Instructions for Distributions. Distributions shall be made pursuant to the limitations contained herein, in the APA, and according to the Foundation.

IV. INVESTMENT OF FUND ASSETS

A. Powers. The Foundation shall have all powers necessary, or in its sole discretion desirable, to carry out the purposes of the Fund, including, but not limited to, the power to retain, invest and reinvest the Fund and the power to commingle the assets of the Fund for investment purposes with those of other funds or the Foundation's general assets.

B. Authority. The Foundation's Board of Directors shall have full authority to invest the assets of the Fund in keeping with the Foundation's Articles and Bylaws and its fiduciary responsibility. Funds may be invested in uninsured securities and are subject to investment risks that may result in loss of value.

C. Investment. The Foundation shall have all powers necessary, or in its judgment desirable, to carry out the purposes of the Fund, including, but not limited to, the power to retain, invest, and reinvest the assets of the Fund and the power to commingle the assets of the Fund for investment purposes with those of other funds or the Foundation's general assets. Funds may be invested in uninsured securities and are subject to investment risks that may result in loss of value.

V. COSTS OF THE FUND

Fees. The Foundation agrees that it shall be responsible for any administrative fees and that any fees, other than investment fees, as detailed herein, may be charged in proportion to each fund of the foundation based on its percentage of the total assets in held by the Foundation. Reasonable investment fees, based on its percentage of the total assets in the investment pool, may be charged to the Fund.

VI. MISCELLANEOUS

A. Definitions. As used in this Agreement, all references to any provision of the Internal Revenue Code shall be deemed references to the U.S. Internal Revenue Code of 1986, as the same may be amended from time to time, and the corresponding provision of any future U.S. Internal Revenue Code.

B. Special Dissolution of the Agreement. Notwithstanding anything otherwise in this Agreement to the contrary, pursuant to I.C. § 36-1-14-1, this Agreement will terminate and the assets of the Fund will be distributed as directed by the County if the Foundation (a) loses its status as a public charitable organization; (b) is liquidated; (c) the Foundation violates the conditions contained in the APA; (d) the Foundation violates the terms of this Agreement; (e) or becomes a supporting organization as defined by IRS 509(a)(3).

C. Interpretation. It is intended that the Fund shall be a component part of the Foundation and

that nothing in this agreement shall affect the status of the Foundation as an entity that is a qualified charitable organization. This Agreement shall be interpreted in a manner consistent with this intention and so as to conform to the requirements of the Internal Revenue Code and any regulations issued pursuant thereto applicable to the intended status of the Foundation.

D. Amendment. This Agreement may be amended by written agreement of both parties.

SIGNATURE PAGE FOLLOWS

