

RECORDS CUSTODIAN AGREEMENT

This **RECORDS CUSTODIAN AGREEMENT** (this “Agreement”) is entered into as of April 1, 2016 (the “Effective Date”), by and among **SOUTHEAST VOLUSIA HOSPITAL DISTRICT**, an independent special taxing district of the State of Florida (the “District”), **BERT FISH MEDICAL CENTER, INC.**, a Florida not-for-profit corporation (“BFMC”), **SOUTHEAST VOLUSIA MEDICAL SERVICES, INC.**, a Florida not-for-profit corporation (“SEVMS”), and **SOUTHEAST VOLUSIA HEALTHCARE CORPORATION**, a Florida not-for-profit corporation (“SEVHC”). The parties shall be referred to collectively as the “Parties,” and each of them as a “Party.” District, BFMC, and SEVMS together may be referred to as the “BFMC Parties.”

WHEREAS, the BFMC Parties are subject to Article I, Section 24, Florida Constitution; Chapter 119, Florida Statutes; Chapter 257, Florida Statutes; and other Florida laws and regulations governing public records (collectively, the “Public Records Act”); and

WHEREAS, BFMC operates, on behalf of District, Bert Fish Medical Center (the “Hospital”), located at 401 Palmetto Street, New Smyrna Beach, Florida; and

WHEREAS, effective as of April 1, 2016, the Parties entered into a Lease and Transfer Agreement (the “Lease Agreement”), an Asset Purchase Agreement, and certain other ancillary agreements (collectively, the “Definitive Agreements”), pursuant to which SEVHC leased or acquired substantially all of the assets of the BFMC Parties; and

WHEREAS, in recognition that all or part of the Hospital’s records may need to be accessed by the Parties hereto in association with their respective operations, Section 3.9 of the Lease Agreement requires the Parties to enter into a Records Custodian Agreement in order to facilitate the transition of the operations of the Hospital on the Commencement Date.

NOW, THEREFORE, in consideration for the mutual promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions.** Terms not otherwise defined in this Agreement are defined as follows:
 - a. “Archive Copy” has the meaning given to it in Section 5.c.
 - b. “Back-Up Copy” has the meaning given to it in Section 3.a.
 - c. “BFMC Representative” means the person designated in writing by the BFMC Parties (with notice of such designation given to SEVHC) to carry out the BFMC Parties’ duties under this Agreement. In the absence of such designation, the Chairman of District’s governing body shall be deemed the BFMC Representative until the BFMC Parties give notice to the contrary to SEVHC.
 - d. “Business Records” means Public Records of the BFMC Parties, excluding Medical Records, that are (i) made or received prior to the Effective Date, and (ii) stored at the Hospital Properties or the Storage Facilities as of the Effective Date.

- e. “Costs” means (i) any copying costs that are recoverable under the Public Records Act, and (ii) the costs of any Extensive Efforts that are required to permit inspection or copying of requested Custodial Records at a Reasonable Time and under Reasonable Conditions.
- f. “Custodial Records” means:
 - i. the Record Copies of Physical Records in the custody of SEVHC as of the Effective Date, until they are transferred to the BFMC Parties pursuant to Section 4, 8, or 9;
 - ii. prior to April 1, 2017, but not thereafter, the Back-Up Copy of Electronic Records (which shall not, however, be the Record Copy of such records);
 - iii. prior to April 1, 2017, but not thereafter, the Server Emails.
- g. “Email Server” has the meaning given to it in Section 3.a.
- h. “Electronic Business Records” means Public Records of the BFMC Parties that are both Electronic Records and Business Records.
- i. “Electronic Medical Records” means Public Records of the BFMC Parties that are both Electronic Records and Medical Records.
- j. “Electronic Records” means Public Records of the BFMC Parties, including the Server Emails, that are (i) made or received prior to the Effective Date, and (ii) stored electronically on a Network Server or a Non-Network Device located at the Hospital Properties or the Storage Facilities as of the Effective Date.
- k. “Excluded Business Records” means Public Records of the BFMC Parties that are: (i) governance documents of the BFMC Parties (e.g., charter, articles of incorporation, bylaws, corporate minute books, or minutes of the governing body or committees); (ii) accounts payable records, excluding those related to the Hospital and physician practices; (iii) general accounting records, excluding those related to the Hospital and physician practices; (iv) pension and welfare benefit records; (v) tax and related records, excluding those related to Hospital staff, such as records pertaining to IRS Forms W-2, W-3, 941, 1096, or 1099; (vi) low income pool program records; (v) worker’s compensation records (e.g., reports or claims); (vii) risk management records related to legal claims made prior to the Effective Date, including all litigation files of any nature (e.g., malpractice, employment, or general liability); (viii) insurance (self-insurance or commercial policies); and (ix) web or social media information.
- l. “Extensive Efforts” means any use of information technology resources or clerical or supervisory assistance that (i) is necessary to permit inspection or copying of requested Custodial Records at a Reasonable Time and under Reasonable Conditions, and (ii) requires more than thirty (30) minutes to perform. “Extensive efforts” includes, for example, review of Custodial Records for exemption if the

volume of records and the number of potential exemptions make review and redaction of the requested Custodial Records a time-consuming task.

- m.** “Hospital Properties” means those locations identified on Exhibit 1-m.
- n.** “Master Copy” has the meaning given to it in Section 3.a.
- o.** “Medical Records” means Public Records of the BFMC Parties that are (i) made or received in connection with the examination, diagnosis, or treatment of patients prior to the Effective Date, and (ii) stored at the Hospital Properties or the Storage Facilities as of the Effective Date.
- p.** “Network Server” means a server, other than the Email Server, that (i) stores Electronic Records on a computer network of the Hospital, and (ii) is located at the Hospital Properties (and not at the Storage Facilities) as of the Effective Date.
- q.** “Non-Network Device” means a device that (i) stores Electronic Records; (ii) is neither a Network Server nor the Email Server; (iii) is located at the Hospital Properties or the Storage Facilities as of the Effective Date; and (iv) is in the custody of SEVHC as of the Effective Date. For avoidance of doubt, neither (A) personally-owned devices of individual SEVHC directors, officers, employees, or agents, or any other person, nor (B) devices that are owned by the proprietors of the Storage Facilities, shall be deemed Non-Network Devices.
- r.** “Physical Business Records” means those Public Records of the BFMC Parties that are both Physical Records and Business Records.
- s.** “Physical Medical Records” means those Public Records of the BFMC Parties that are both Physical Records and Medical Records.
- t.** “Physical Records” means Public Records of the BFMC Parties, that are (i) made or received prior to the Effective Date, and (ii) stored physically at the Hospital Properties or the Storage Facilities as of the Effective Date.
- u.** “Public Records” means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received in connection with the transaction of official business of the BFMC Parties.
- v.** “Public Records Request” means any request to inspect or copy any Public Record(s) of the BFMC Parties.
- w.** “Reasonable Conditions” means conditions that, in order of importance: (i) protect patient confidentiality; (ii) permit the requested inspection or copying of the Custodial Records; (iii) protect the Custodial Records from alteration, damage, or destruction; and (iv) limit unnecessary disruption to the operations of SEVHC.

- x. “Reasonable Time” means between 9:00 a.m. and 5:00 p.m., Monday through Friday, Eastern Time, except on holidays observed by SEVHC.
- y. “Record Copy” means the original of a Public Record, or the copy of a Public Record designated under Section 3 as the Record Copy.
- z. “Requestor” means any person who makes a Public Records Request.
- aa. “Server Emails” has the meaning given to it in Section 3.a.
- bb. “Staff” means all employees and agents of SEVHC.
- cc. “Storage Facilities” means all of the properties listed in Exhibit 1-cc.
- dd. “Storage Vendor” means a person in the business of storing records.
- ee. “Transition Services Agreement” means the Transition Services Agreement, by and between the Parties, dated as of the Effective Date.
- ff. “Transition Services Records” means records made or received by SEVHC in connection with its provision of Transition Services to the BFMC Parties during the term of the Transition Services Agreement.

Capitalized terms not otherwise defined in this Agreement shall be defined as they are defined in the Definitive Agreements. Lower-case terms that are defined in chapter 119, Florida Statutes shall be defined as they are defined in that chapter.

Where the term “BFMC Parties” is used, any obligation to be performed by the BFMC Parties may be performed by any or all of them, and any obligation owed to the BFMC Parties shall be owed to all of them.

- 2. **Engagement of SEVHC.** The BFMC Parties agree to engage SEVHC to serve as custodian of the Custodial Records, and SEVHC accepts the engagement. SEVHC shall provide reasonable training to its Staff as to compliance with the obligations set forth in this Agreement.

3. **Record Copies of Custodial Records**

- a. **Duties Under Transition Services Agreement.** By way of background, Sections 2.5.1, 2.5.2, and 2.5.3 of the Transition Services Agreement state:

2.5.1 At the sole expense of the BFMC Parties, SEVHC shall deliver to the BFMC Parties: (a) on the Effective Date, a copy of all electronically-stored records made or received by the BFMC Parties on or before midnight on March 31, 2016, which are stored on the Email Server, as defined below, or on any other server that (i) stores records electronically on a computer network of the Hospital, and (ii) is located at one of the properties set forth in Exhibit 1-m of the Records Custodian Agreement by

and among the Parties, as of the Effective Date (the “Master Copy”); and (b) within sixty (60) days of the Effective Date, a refreshed copy of the Master Copy. SEVHC also shall retain a copy of such records for its own use (the “Back-Up Copy”).

2.5.2 If requested by the BFMC Parties, and at their sole expense, SEVHC shall consult with the BFMC Parties (or their third party vendor) in establishing an appropriate vehicle by which the BFMC Parties may retrieve and use records stored on the Master Copy; provided, however, that SEVHC shall not take on a primary role in that process.

2.5.3 SEVHC shall maintain the dedicated server for email located at the Hospital (the “Email Server”), and the emails stored on the Server (the “Server Emails”), at the sole expense of the BFMC Parties, until the expiration or termination of th[e Transition Services] Agreement, at which time SEVHC may dispose of the Email Server, and the Server Emails, as provided under Section 5.2.3(c) [of the Transition Services Agreement].

b. Electronic Records. The Master Copy shall be the Record Copy of all of the Electronic Records. Neither the Back-Up Copy nor the Server Emails shall be the Record Copy of any of the Electronic Records.

c. Physical Records. As of the Effective Date, the Record Copies of Physical Records shall be placed in the custody of SEVHC until such Record Copies are transferred to the BFMC Parties under Section 4, 8, or 9.

4. Transfer of Custodial Records to BFMC Parties. The Record Copies of all Custodial Records in the possession of SEVHC shall be transferred to the custody of the BFMC Parties (i) upon request by the BFMC Parties pursuant to Section 8, (ii) upon termination of this Agreement pursuant to Section 9, or (iii) at such earlier date as is set forth below in Subsection a, b, or c; provided, however, that nothing herein shall be interpreted as precluding SEVHC from retaining a copy of any Custodial Record in order to substantiate services rendered pursuant to this Agreement.

a. Excluded Business Records. On the Effective Date, or as soon thereafter as is reasonably practicable, the BFMC Parties shall make their best efforts to take custody of all Record Copies (and any duplicates of which they wish to take custody) of all Excluded Business Records that are located at the Hospital Properties. If any Record Copies of Excluded Business Records have not been removed from the Hospital Properties as of August 1, 2016, SEVHC may remove the Record Copies of the Excluded Business Records and place them with a Storage Vendor, the cost of which shall be borne by the BFMC Parties (or reimbursed to SEVHC, if SEVHC has paid the Storage Vendor); provided, however, that SEVHC shall provide the BFMC Parties with prompt notice as to the location of the Storage Vendor and a general description of the Excluded Business Records delivered to the Storage Vendor. SEVHC shall have no further obligation under this Agreement as to any Excluded Business Record, as of the

date the Record Copy of it is delivered to the BFMC Parties pursuant to Section 4, 8, or 9, or to a Storage Vendor pursuant to this Section 4.a.

- b. Physical Records at Storage Facilities.** Within ninety (90) days of the Effective Date, the BFMC Parties shall take custody of all Physical Business Records currently stored at the Storage Facilities, but all Physical Medical Records stored at the Storage Facilities shall remain in the custody of SEVHC.

5. Retention, Destruction, and Disposal.

- a. Retention.** SEVHC shall exercise reasonable care to retain, store, and maintain any Record Copies of Physical Records transferred to its custody in accordance with this Agreement, taking into consideration: (i) the requirements of the Public Records Act; (ii) this Agreement; (iii) reasonable business practices; and (iv) all applicable General Retention Schedules promulgated by the Division of Library and Information Services (including current Schedules GS1-SL and GS4), provided, however, nothing in this Agreement shall be interpreted as requiring SEVHC to copy or repair, renovate or rebound any worn, mutilated, damaged or difficult to read Record Copy unless the BFMC Parties pay all associated costs. In the event, however, that an act or omission of SEVHC mutilated or damaged the Record Copy, SEVHC shall repair the Record Copy at its own expense.
- b. Destruction or Disposal.** SEVHC must give notice to the BFMC Parties before destroying, or otherwise disposing of, any Record Copy of a Custodial Record, which notice shall provide a detailed explanation of: (i) the Record Copy that SEVHC intends to destroy, or otherwise dispose of, and (ii) the basis for SEVHC's position that the Record Copy should be destroyed, or otherwise disposed of. SEVHC shall not destroy, or otherwise dispose of, any Record Copy without the written approval of the BFMC Parties, provided, however, that no written approval shall be required to be obtained by SEVHC from a BFMC Party that has been dissolved, voluntarily or involuntarily. For avoidance of doubt, a duplicate of a Record Copy of a Physical Record may be destroyed, or otherwise disposed of, by SEVHC upon its determination that the duplicate's administrative value is lost, without the necessity or requirement of providing notice to the BFMC Parties or obtaining their approval.
- c. Electronic Business Records and Server Emails.** SEVHC shall retain duplicate copies of the Back-Up Copy, with one Back-Up Copy being deemed the "Archive Copy." SEVHC shall not be required to give notice to the BFMC Parties of the destruction or disposal of Electronic Business Records stored on the Back-Up Copy (which includes copies of the Server Emails), provided that the Archive Copy remains intact, except as otherwise is required under Subsection (e)(iii), through midnight on March 31, 2017, at which time SEVHC shall have no further duties under this Agreement as to Electronic Business Records, including all Electronic Business Records on the Back-Up Copy and the Server Emails.

- d. **Electronic Medical Records.** SEVHC shall retain, and give notice to the BFMC Parties of the destruction or disposal of, Electronic Medical Records stored on the Back-Up Copy, as provided in Subsections a and b, for the duration of this Agreement.
- e. **Electronic Records on Non-Network Devices.** SEVHC may destroy, or otherwise dispose of, any Non-Network Device, or any records contained on any Non-Network Device that are not Electronic Records, provided that SEVHC (i) first determines whether any Electronic Records of the BFMC Parties are stored on the Non-Network Device, which are not stored on the Archive Copy; (ii) promptly returns any Electronic Business Records of the BFMC Parties that are stored on the Non-Network Device, but are not stored on the Archive Copy, to the BFMC Parties; and (iii) promptly stores on the Archive Copy any Electronic Medical Records that were stored on the Non-Network Device.

6. Public Records Requests

- a. **Receipt by the BFMC Parties.** The BFMC Parties shall receive any Public Records Request made to them by a Requestor, and promptly shall acknowledge the Public Records Request to the Requestor in writing. If the Public Records Request is for Custodial Records, in whole or in part, the BFMC Parties promptly shall forward a copy of the Public Records Request, or a detailed explanation of an oral Public Records Request, to SEVHC by electronic mail (or other reasonable and prompt medium, but in no event by regular mail), with a simultaneous copy provided to Theresa Hoban (Theresa.Hoban@ahss.org) or such other person as SEVHC may designate in writing, with notice of such designation given to the BFMC Parties.
- b. **Receipt by SEVHC.** SEVHC shall receive any Public Records Requests made to it by a Requestor, and promptly shall acknowledge the Public Records Request to the Requestor in writing. SEVHC shall not require the Requestor to perform any act as a condition of receiving a Public Records Request, including: (i) requiring the Requestor to identify himself or herself; (ii) requiring that the Public Records Request be in writing or in a particular format; or (iii) requiring that the Public Records Request be made to a particular individual. SEVHC promptly shall forward a copy of the Public Records Request, or a detailed explanation of an oral Public Records Request, to the BFMC Representative by electronic mail (or other reasonable and prompt medium, but in no event by regular mail), with a simultaneous copy provided to Jon Gatto (jgatto@carltonfields.com) or such other person as the BFMC Parties may designate in writing, with notice of such designation given to SEVHC.
- c. **SEVHC Report.** Upon receipt of a Public Records Request either from a Requestor or from the BFMC Parties, SEVHC promptly shall:
 - i. determine, through a reasonable search, whether SEVHC has custody of responsive Custodial Records; provided, however, that SEVHC shall not

be required to search any Non-Network Device unless it has reason, after reasonable inquiry, to believe that responsive Electronic Records are stored on that specific Non-Network Device, but not on the Back-Up Copy or the Archive Copy;

- ii. determine whether Extensive Efforts will be required to permit inspection or copying of responsive Custodial Records at a Reasonable Time and under Reasonable Conditions; and
 - iii. provide to the BFMC Representative by electronic mail (or other reasonable and prompt medium, but in no event by regular mail) a detailed report (the "SEVHC Report") as to whether: (A) SEVHC has custody of responsive Custodial Records; (B) any responsive Custodial Records are exempt from inspection or copying under the Public Records Act (and, if so, SEVHC shall state the basis for such exemption); and (C) Extensive Efforts will be required to permit inspection or copying of any responsive Custodial Records at a Reasonable Time and under Reasonable Conditions (and if Extensive Efforts will be required, a detailed estimate of the costs of those Extensive Efforts), with a simultaneous copy provided to the BFMC Jon Gatto (jgatto@carltonfields.com) or such other person as the BFMC Parties may designate in writing (with notice of such designation given to SEVHC).
- d. **District Instructions.** Upon the BFMC Parties' receipt of the SEVHC Report, or at an earlier time if the SEVHC Report is not provided in a timely manner, the BFMC Representative promptly shall instruct SEVHC by electronic mail (or other reasonable and prompt medium, but in no event by regular mail) as to how to respond to the Public Records Request, with a simultaneous copy delivered to Theresa Hoban (Theresa.Hoban@ahss.org) or such other person as SEVHC may designate in writing, with notice of such designation given to the BFMC Parties. Such instructions may include, without limitation:
- i. permitting inspection or copying of any or all requested Custodial Records at a Reasonable Time and under Reasonable Conditions;
 - ii. withholding any or all of the requested Custodial Records as exempt;
 - iii. redacting exempt portions of any or all requested Custodial Records; and
 - iv. conditioning inspection or copying of any or all requested Custodial Records on payment of an advance deposit for estimated Costs.
- e. **Response.** Upon receipt of any instructions from the BFMC Representative, SEVHC promptly shall respond to the Requestor as to any Custodial Record, in strict accordance with those instructions. SEVHC shall communicate to the Requestor in sufficient detail:
- i. the basis for any assertion of an exemption;

- ii. if applicable: (A) the basis for (1) requiring an advance deposit as a condition of inspecting or copying of any requested Custodial Records and (2) the amount of such deposit; (B) that the Requestor may be responsible for the actual Costs that exceed the amount of such deposit; and (C) that the Requestor is entitled to a refund if the actual Costs are less than the amount of such deposit; and
 - iii. one or more suggested Reasonable Times and any Reasonable Conditions for inspection or copying of the requested Custodial Records.
 - f. **Inspection and Copying.** Subject to payment of any required advance deposit, SEVHC shall make non-exempt, responsive Custodial Records available to the Requestor for inspection or copying, or both, at a Reasonable Time and under Reasonable Conditions. Staff shall supervise any inspection or copying of the Custodial Records by the Requestor. SEVHC may offer to provide copies of the requested Custodial Records to the Requestor in lieu of inspection or copying by the Requestor, but must permit the Requestor to inspect or copy the requested Custodial Records if that is the Requestor's preference.
 - g. **Payment of Costs.** All Costs paid by any Requestor for Custodial Records shall be paid to, and shall be the property of, SEVHC. If the Requestor pays an amount of estimated Costs to SEVHC, and if the actual Costs, as subsequently determined, are less than the amount of the estimated Costs, SEVHC shall refund the difference to the Requestor.
 - h. **Access to Definitive Agreements.** To facilitate access to the Definitive Agreements by members of the public, the BFMC Parties shall make available on the websites of the BFMC Parties (www.sevhd.com or http://bertfish.com/about/our_future), as promptly as possible (but in no event more than ten (10) days) after the Effective Date, copies of the Definitive Agreements, including this Agreement.
 - i. **Notification to Members of the Public.** The BFMC Parties agree to post a notice on the websites of the BFMC Parties (www.sevhd.com or http://bertfish.com/about/our_future), as promptly as possible (but in no event more than ten (10) days) after the Effective Date, that the BFMC Parties remain responsible for their Public Records and that, for a limited period of time, BFMC has agreed to assist the BFMC Parties in responding to Public Records Requests. Nothing herein shall preclude SEVHC from posting a similar notice on its website; provided, however, that the posting of such a notice by SEVHC shall not alter SEVHC's obligations under this Agreement.
7. **Liability.** The BFMC Parties shall have ultimate authority over, and ultimate responsibility for, their compliance with the Public Records Act. The BFMC Parties and SEVHC may discuss the appropriateness of the BFMC Parties instructions, so long as those discussions do not cause an unreasonable delay in responding to a Public Records Request. SEVHC, however, must strictly comply with the BFMC Parties' instructions.

To the extent permitted by law, the BFMC Parties will indemnify and hold harmless SEVHC for any third party liability incurred by SEVHC as a result of actions taken by SEVHC, the Records Custodian, or the Staff in strictly complying with the BFMC Representative's instructions. SEVHC shall indemnify and hold harmless the BFMC Parties for any third party liability incurred by the BFMC Parties as a result of the failure by SEVHC or the Staff to strictly comply with the BFMC Representative's instructions.

8. **Transfer of All Record Copies of Custodial Records to the BFMC Parties.** The BFMC Parties may request a transfer of the Record Copy of any Custodial Record. Upon receipt of such a request, SEVHC promptly shall deliver the requested Record Copy of a Custodial Record to District, which shall be done at the expense of the BFMC Parties; provided, however, that SEVHC may destroy, or otherwise dispose of, any records in its custody, except as otherwise provided in Section 5.
9. **Term and Termination.** This Agreement shall terminate on the earliest of the following dates: (a) the date agreed to in writing by the Parties; (b) ninety (90) days after the date on which the Lease Agreement terminates; or (c) 365 days after the date on which SEVHC gives notice of termination to the BFMC Parties, provided that such notice is given after the fifth (5th) anniversary of the Effective Date.
10. **Compliance with Laws.** Each Party shall at all times comply, and use its best efforts to assist the other Parties in complying, with: (a) all applicable laws, rules, regulations and policies of governmental authorities; and (b) the Public Records Act.
11. **HIPAA and HITECH Act.** The Parties agree to comply with the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, including the Standards for Electronic Transactions and Code Sets (45 C.F.R. Parts 160 and 162), the Standards for Privacy of Individually Identifiable Health Information (45 C.F.R. Parts 160 and 164), the Security Standards for the Protection of Electronic Protected Health Information (45 C.F.R. Parts 160 and 164), and such other regulations that may, from time to time, be promulgated thereunder, and including the amendments thereto pursuant to the Health Information Technology for Economic and Clinical Health Act, part of the American Recovery and Reinvestment Act of 2009, and regulations promulgated thereunder (collectively, "HIPAA"). The Parties agree not to use or further disclose any Protected Health Information or Individually Identifiable Health Information, as defined at 45 C.F.R. § 160.103, other than as permitted by HIPAA. In furtherance hereof, the Parties have executed a Business Associate Agreement, with the BFMC Parties as the Covered Entity and SEVHC as the Business Associate.
12. **Medicare Access to Records.** Until the expiration of ten (10) years after the furnishing of services pursuant to this Agreement, the Parties shall make available, upon request, to the United States Department of Health and Human Services, the Comptroller General, or any other duly authorized representative of the federal government, this Agreement, and the books, documents, and records of any of the other Parties that are necessary to certify the nature and extent of the services furnished hereunder. Further, if SEVHC carries out any duties hereunder through a related organization, SEVHC shall include this provision in any contract with the related organization, in accordance with Section 952 of the

Omnibus Reconciliation Act of 1980 (P.L. 96-499).

13. **Indemnification.** In addition to the requirements of Section 7, and to the extent allowed by law, SEVHC, on the one hand, and the BFMC Parties, on the other hand, agree to indemnify and hold harmless one another, including one another's officers, directors, employees, agents, and representatives, and one another's respective successors and permitted assigns, from and against any and all third party claims, demands, actions, charges, liabilities, and damages, including reasonable attorneys' fees and expenses, arising from or relating to the indemnifying Party's breach of this Agreement.
14. **Independent Contractor Relationship.** SEVHC, on the one hand, and the BFMC Parties, on the other hand, are independent contractors, and nothing in this Agreement shall be deemed to create any partnership, joint venture, or other relationship (other than as independent contractors) between them. Nothing in this Agreement shall impose any liability upon any or all of the BFMC Parties for the debts of SEVHC, or vice versa.
15. **Assignment.** Any Party may assign any or all of its rights or delegate any or all of its duties under this Agreement to an affiliate or successor entity upon thirty (30) days' notice to the other Parties; provided, however, that such assignment or delegation by SEVHC shall not release SEVHC of any of its obligations under this Agreement. Except as provided in the immediately preceding sentence, no Party may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other Parties. This Agreement shall be binding upon, and inure to the benefit of each of, the Parties and their successors and permitted assigns.
16. **Rights Cumulative; No Waiver.** Any rights or remedies of any Party in the event of a breach by another Party are intended to be cumulative, rather than exclusive. Moreover, if any Party chooses not to insist upon strict performance of any provision of this Agreement, that choice shall not impair its rights to insist on strict performance in the event of subsequent acts of default. The waiver by a Party of any breach of any provision of this Agreement by another Party shall not operate or be construed as a waiver of any subsequent breach by that other Party.
17. **Attorneys' Fees and Expenses.** In the event of any dispute under this Agreement, the prevailing Party shall be entitled to recover from the other Party the prevailing Party's legal fees and expenses, including such fees and expenses incurred before or during trial, on appeal, or in bankruptcy proceedings.
18. **Notices.** Except as otherwise provided in Section 7, all notices or other communications required or permitted hereunder shall be in writing; and shall be delivered personally or by a recognized courier service, or sent by certified or registered mail, return receipt requested, postage prepaid, as follows:

If to the BFMC Parties: Southeast Volusia Hospital District
Post Office Box 909
New Smyrna Beach, Florida 32170-0909
Attention: Chairman of the Board

With copy (which shall not constitute notice) to: Carlton Fields Jordan Burt, P.A.
4221 West Boy Scout Boulevard
Suite 1000
Tampa, Florida 33607
Attention: James J. Kennedy, III, Esq.

If to SEVHC: Southeast Volusia Healthcare Corporation
401 Palmetto Street
New Smyrna Beach, Florida 32816
Attention: President

With copy (which shall not constitute notice) to: Adventist Health System Sunbelt Healthcare Corporation
900 Hope Way
Altamonte Springs, Florida 32714
Attention: Chief Legal Officer

-and-

Adventist Health System East Florida Region
1055 Saxon Boulevard
Orange City, Florida 32763
Attention: CEO Florida Division East Florida Region

or to such other address, or to the attention of such other individual or officer, as a Party may designate by notice given in accordance with this Section 19. Notice shall be deemed to have been given and received when delivered personally or by recognized courier, or on the fifth day after such notice has been mailed in accordance with this Section 19. Notice to or from any of the BFMC Parties shall constitute notice to or from all of them. Notwithstanding this Section 19, communications regarding the handling of any Public Records Requests may be made by electronic mail, or any other prompt media, and may be addressed by the BFMC Parties to any Staff.

19. No Third Party Beneficiaries. Except as provided in Section 164, this Agreement: (a) is solely for the benefit of the Parties hereto, and will in no way be construed to entitle any third party to any compensation or benefit; (b) does not create any third-party beneficiaries; and (c) does not confer any rights or remedies upon any person or entity other than the Parties and their respective successors and permitted assigns.

20. Headings; Construction. Headings to Articles, Sections, and Subsections herein are for purposes of reference only, and shall in no way limit, define, or otherwise affect the provisions hereof. As used in this Agreement, unless the context clearly indicates otherwise, the terms “hereunder,” “herein,” “hereto,” “hereof,” “hereby,” or similar terms, shall refer to this Agreement as a whole, together with all Exhibits hereto, as it may be amended from time to time, and the word “including” shall mean “including, without limitation.” Inasmuch as this Agreement is the result of negotiations between sophisticated parties of equal bargaining power, all of whom are represented by counsel,

there shall be no presumption created as a result of any Party having prepared any or all provisions of this Agreement.

21. **Complete Agreement; Amendment; Severability.** This Agreement contains the entire agreement among the Parties with respect to the subject matter hereof. All prior negotiations and understandings are merged herein. This Agreement may not be modified unless agreed to in a writing signed by all Parties. Should any part of this Agreement be declared invalid or unenforceable by a court or regulatory body of competent jurisdiction, such decision shall not affect the validity or enforceability of the remaining parts, which shall remain in full force and effect.
22. **Governing Law and Venue.** This Agreement shall be construed and enforced according to the laws of the State of Florida, without regard to its conflicts of law rules. ANY LEGAL SUIT, ACTION, OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, OR UPON THE TRANSACTIONS CONTEMPLATED HEREBY, SHALL BE BROUGHT SOLELY IN THE COURTS OF THE STATE OF FLORIDA LOCATED IN VOLUSIA COUNTY, FLORIDA. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY: (a) SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY SUCH COURT FOR ANY SUCH SUIT, ACTION, OR PROCEEDING; (b) WAIVES ANY OBJECTION TO THE LAYING OF VENUE IN ANY SUCH COURT FOR ANY SUCH SUIT, ACTION, OR PROCEEDING; AND (c) AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT SUCH SUIT, ACTION, OR PROCEEDING HAS BEEN BROUGHT IN AN IMPROPER OR INCONVENIENT FORUM.
23. **Waiver of Jury Trial.** EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO A TRIAL BY JURY IN ANY LEGAL SUIT, ACTION, OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, OR UPON THE TRANSACTIONS CONTEMPLATED HEREBY, AND AGREES THAT ANY SUCH SUIT, ACTION, OR PROCEEDING SHALL BE TRIED BEFORE A JUDGE AND NOT BEFORE A JURY.
24. **Execution in Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original agreement, but all of which together shall constitute one and the same instrument.
25. **Transition Services Records.** This Agreement shall not apply to Transition Services Records, nor shall it apply to any other records made or received by SEVHC after the Effective Date. The maintenance, retention, and provision of Transition Services Records shall be governed by the Transition Services Agreement.

[Signature Page Follows]

The Parties have caused this Agreement to be executed as of the date stated in the opening paragraph of this Agreement.

SOUTHEAST VOLUSIA HOSPITAL DISTRICT

By: _____
Name: _____
Title: _____

BERT FISH MEDICAL CENTER, INC.

By: _____
Name: _____
Title: _____

SOUTHEAST VOLUSIA MEDICAL SERVICES, INC.

By: _____
Name: _____
Title: _____

**SOUTHEAST VOLUSIA
HEALTHCARE CORPORATION**

By: Debra H. Thomas
Name: Debra H. Thomas
Title: Treasurer

HOSPITAL PROPERTIES

1. The Hospital Real Property, as defined in the Lease Agreement
2. The Other Real Property, as defined in the Asset Purchase Agreement
3. The Community Health Clinic, as defined in the Lease Agreement
4. The Center for Rehabilitation and Wellness, 507 South Orange Street, New Smyrna Beach, Florida
5. Human Resources Office, 705 Live Oak Street, New Smyrna Beach, Florida
6. Marketing Office, 713 Live Oak Street, New Smyrna Beach, Florida

STORAGE FACILITIES

1. Vital Records Control, 680 Atlantis Avenue, Melbourne, Florida
2. AAA Mini Storage, 701 Live Oak Street, New Smyrna Beach, Florida
3. AAA Mini Storage, 703 Live Oak Street, New Smyrna Beach, Florida