

OPERATING AGREEMENT
BY AND BETWEEN
RUSK COUNTY, WISCONSIN
AND
MCHS HOSPITALS, INC.,

_____, 2018

OPERATING AGREEMENT

THIS OPERATING AGREEMENT (this “*Agreement*”) dated [_____], 2018, is entered into by and between MCHS Hospitals, Inc., a Wisconsin non-stock corporation (“*MCHS*”) and Rusk County, Wisconsin, a body corporate existing pursuant to Chapter 59 of the Wisconsin Statutes (the “*County*”).

RECITALS

A. MCHS and County are party to that certain Asset Purchase Agreement dated _____, 2018 (the “*Purchase Agreement*”), pursuant to which MCHS is acquiring the RCMH Business. Capitalized terms not otherwise defined in this Agreement shall have the meanings ascribed to such terms in the Purchase Agreement.

B. As an incentive to the County to enter into the Purchase Agreement, MCHS has agreed to acquire the New Real Estate and construct thereon a new hospital facility, medical office building, and ambulatory and acute care service facility within Rusk County, Wisconsin (collectively, the “*Replacement Facility*”).

C. MCHS and County desire to set out certain understandings and agreements relating to MCHS’ operation of the RCMH Business and the construction of the Replacement Facility, according to the terms of this Operating Agreement.

NOW THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants, agreements and conditions hereinafter set forth, and intending to be legally bound hereby, the parties hereto agree as follows:

1. DEFINITIONS. For purposes of this Agreement, the following definitions apply:

(a) “*Construction Period*” means the period from the Closing Date through the date that is five (5) years after the Closing Date, subject to extension as mutually agreed by the parties hereto, provided that the County will not unreasonably withhold its consent to an extension of the Construction Period to the extent of any delays in the acquisition of the New Real Estate and/or construction of the Replacement Facility that occur due to circumstances beyond the reasonable control of MCHS, including without limitation the inability of the parties to identify a mutually agreeable New Real Estate parcel within 24 months following the date of this Agreement, or delays in site acquisition, site preparation, governmental or regulatory approvals, or construction activities, in each case not attributable in any material respect to the acts or omissions of MCHS, but in no event more than seven (7) years after the Closing Date.

(b) “*Core Service Line(s)*” means any of the following, as provided as of the date of this Agreement: Diagnostic imaging/procedures, Cardiac diagnostics and maintenance services, Laboratory services, Therapy services, Pharmacy services, Professional services (Hospitalist/ED/Anesthesia/OP/Procedural), Rehabilitation services, Infusion/injection services,

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and Institutional services (i.e. infection control, UR/UM, dietary), Acute care services, Medical/Surgical (inpatient, observation and swing bed) and ICU services, Dietician services, Provider based Rural Health Clinic, Nursing services, Urgent care services, Trauma designated services, Chronic disease management, IP and OP surgical services.

(c) “**Equipment**” means all medical equipment used in the operation of the RCMH Business, as of the date of the exercise of the Option.

(d) “**Lease**” means that certain lease of even date herewith by and between County and MCHS, relating to the real estate owned by County and located at 900 College Ave. W, Ladysmith, Wisconsin 54848.

(e) “**Local Advisory Board**” has the meaning set forth in Section 7 below.

(f) “**New Real Estate**” means a parcel of real property within the County which the parties mutually determine, in good faith, to be reasonably suitable for the construction and operation of the Replacement Facility, and which can be acquired for a cost which, when combined with the anticipated cost of constructing and equipping the Replacement Facility, does not exceed \$35,000,000.

(g) “**Substantially Complete,**” “**Substantial Completion**” and terms of similar import, when used in this Agreement, shall mean the stage in the progress of construction at which the Replacement Facility is sufficiently complete in accordance with applicable construction documents so that the Replacement Facility can be occupied and utilized as an acute care operational hospital, sufficiently equipped and furnished to admit and treat patients, notwithstanding that MCHS may not yet have received all certificates of occupancy and all applicable permits, approvals, licenses and other documents from all governmental and accrediting authorities that are necessary for operations to commence, provided that such certificates, permits, approvals and licenses have been applied for.

(h) “**Technology Systems**” means all information technology assets and components involved with or relating to the operation of the RCMH Business as of the date of the exercise of the Option, including without limitation applications software, operating systems, database management software, servers, storage area network, core network switches, wide area network circuits, desktop PCs, tablet PCs, iOS devices, printers, and multifunction devices.

2. CONSTRUCTION OF REPLACEMENT FACILITY. MCHS agrees to invest not more than \$35,000,000 in the acquisition of the New Real Estate and construction and furnishing of the Replacement Facility, which shall be Substantially Complete no later than the last day of the Construction Period.

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3. **OPTION TO REPURCHASE ASSETS.** As security for MCHS's promise to construct and equip the Replacement Facility, MCHS hereby grants to County an option (the "**Option**") to purchase, at County's sole discretion, any part or all of the Equipment and Technology Systems.

(a) **Conditions to, and time of, Option Exercise.** The County may exercise the Option only by written notice to MCHS in either of the following two circumstances:

(i) in the event that the Replacement Facility is not Substantially Complete by the last day of the Construction Period, the County may exercise the Option at any time within 60 days after the end of the Construction Period; or

(ii) if prior to the end of the Construction Period MCHS proposes to sell, transfer or otherwise dispose of the RCMH business, or to combine the RCMH business with any other entity (any of such events, a "**Triggering Transaction**"), the County may exercise the Option as follows: In the event MCHS proposes to enter into a Triggering Transaction, MCHS shall provide written notice to the County of its intent to engage in a Triggering Transaction, and the County shall have a period of sixty (60) days from the date of such notice within which to exercise the Option, failing which the Option shall lapse. A "Triggering Transaction" for this purpose shall not include any transfer or combination (by whatever means) of the RCMH business to or with any current or future affiliate of MCHS, nor to any transaction involving the acquisition or combination (by whatever means) of all or substantially all of MCHS's businesses in a single transaction or series of related transactions, or the acquisition or combination of MCHS's parent entity, provided that in any such case MCHS (and any successor to it which becomes the owner or operator of the RCMH Business), shall assume (or remain bound by) MCHS's obligations under this Agreement.

(b) **Option Price.** The purchase price payable under the Option shall be:

(i) With respect to any of the Purchased Assets, or replacements therefor, in use in the RCMH Business at the time of exercise, One Dollar (\$1.00).

(ii) With respect to any Equipment or Technology Systems assets acquired by MCHS after the Closing (other than replacements for the Purchased Assets), the book value of such assets, as reflected on MCHS' books and records, as of the date of exercise of the Option.

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4. OPTION TO PURCHASE MCI REAL ESTATE. MCHS's affiliate, Marshfield Clinic, Inc. ("MCI") is the owner of certain real estate (the "*MCI Real Estate*") contiguous to the Real Estate which is the subject of the Lease. Contemporaneously with the execution of this Agreement, MCHS will cause MCI to grant to County an option to purchase the MCI Real Estate on the following terms (subject to the provisions of Section 5 of this Agreement ("Right of First Refusal")) (the "*Clinic Purchase Option*").

(a) Option Term. County may exercise the Clinic Purchase Option by written notice to MCI at any time after the date on which the MCI Real Estate is no longer occupied by MCI or its affiliates and through December 31, 2025 (the "Option Expiration Date"); provided that the Clinic Purchase Option may not be exercised, and shall lapse, if and when the Option (as described in Section 3 above) is exercised.

(b) Option Price. Subject to Section 5(b) below, the purchase price payable under the Clinic Purchase Option will be equal to 90% of the fair market value of the MCI Real Estate, as established by an appraiser mutually agreed upon by the parties hereto. Subject to Section 5(b) below, the option price will be payable in full in cash upon the closing the purchase transaction.

(c) Memorandum of Clinic Purchase Option. A memorandum of the Clinic Purchase Option may be recorded in the real estate records of the County. The parties hereto agree to execute such instruments and take such actions to record such memorandum of the Clinic Purchase Option as County deems reasonably required.

5. RIGHT OF FIRST REFUSAL. The Clinic Purchase Option will include provisions to the following effect:

(a) In the event that MCI elects to offer the MCI Real Estate for sale or to enter into discussions with a potential purchaser of the MCI Real Estate, prior to the exercise of the Clinic Purchase Option and prior to the Option Expiration Date, MCI shall notify the County of its intent to offer the MCI real estate for sale and County will then have 60 days from the date of such notice (but in no event later than the Option Expiration Date) to exercise the Clinic Purchase Option (subject to the paragraph (c) of this Section 5).

(b) If at the time of MCI's notice to the County pursuant to the preceding paragraph (a) MCI is in possession of a bona fide offer from a third party to purchase the MCI Real Estate, such notice shall include information regarding the price and payment terms of such third party offer ("Third Party Price and Terms"), and in that event the County's option price and payment terms shall be the same as the Third Party Price and Terms.

(c) In the event that County does not exercise the Clinic Purchase Option within the period provided in paragraph (a) of this Section 5, County will be deemed to have waived the Clinic Purchase Option and the same shall thereby lapse, and MCI may sell the MCI Real Estate to a third party, provided that in the event that the sale is pursuant to paragraph (b) above, the sale shall be on terms no less favorable to MCI than the Third Party Price and Terms.

Notwithstanding the foregoing, if the MCI Real Estate remains unsold and is not actively listed for sale with a bona fide real estate broker as of the date that is one year following the expiration of the option period referred to in paragraph 5(a) above, then the Clinic Purchase Option shall be automatically reinstated as of such one-year date (provided that the Option Expiration Date has not then passed), subject to the future application of this Section 5 if MCI thereafter elects to offer the MCI Real Estate for sale.

6. INTEGRATION; ALIGNMENT.

(a) **Integrated System.** MCHS will operate the RCMH Business as part of an integrated system with the existing medical group and ambulatory operations of Marshfield Clinic's Ladysmith Center, provided that RCMH retains its status as a critical access hospital.

(b) **CAO.** At Closing, MCHS, with the approval of the Local Advisory Board, will appoint the initial chief administrative officer of the Rusk County Business (the "**CAO**"). The CAO will lead the process of aligning the MCHS strategic plan with the specific needs of the Rusk County and Ladysmith, Wisconsin, communities. The CAO will collaborate with the Local Advisory Board, MCHS Service Line Leadership, MCHS system leadership, and other key stakeholders. It is anticipated that the CAO's reporting relationships within the MCHS service line leadership and other leadership, as well as the CAO's participation in meetings of the MCHS Board of Directors ("**MCHS Board**"), will be consistent with the manner in which the chief administrative officers in the MCHS facilities in Rice Lake, Wisconsin, and Eau Claire, Wisconsin function, subject to the right of MCHS to adjust such reporting relationships as it may determine to be appropriate from time to time.

(c) **Medical Staff.** In adopting and applying credentialing policies and procedures for the Hospital, MCHS will refrain from any action that would have the effect of arbitrarily denying privileges or appointment to practitioners solely because they are not affiliated with Marshfield Clinic.

7. LOCAL ADVISORY BOARD. A local advisory board ("**Local Advisory Board**") is hereby established to oversee the combined local operations of Marshfield Clinic and the RCMH Business. The Local Advisory Board will consist of five to seven members, having staggered terms of three years each, including one physician representative from the RCMH Business community (the "**Physician Member**"), one member selected by MCHS (whose initial term shall be three years), one member from the County Board (whose initial term shall be three years) (the "**County Member**"), and the remainder from the local community (the "**Community Board Members**"). The initial Physician Member, and thereafter succeeding Physician Members, will be chosen by the Medical Staff of the RCMH Business. The initial Community Board Members shall be chosen by the County Board in its sole discretion at Closing from among a panel of candidates proposed by the RCMH Board of Trustees and approved by MCHS, such approval not to be unreasonably withheld, conditioned or delayed. Thereafter, the Community Board Members' successors shall be approved by the MCHS Board from a panel of candidates proposed by the incumbent Community Board Members. The number of candidates on the panel proposed by the incumbent Community Board Members shall be not fewer than

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150% of the number of positions to be filled. The CAO shall participate in meetings of the Local Advisory Board as a non-voting member.

The Local Advisory Board will operate pursuant to bylaws which will include provisions consistent with this Section 7 and Section 8 of this Agreement and otherwise be in form mutually acceptable to the parties hereto (the “*Bylaws*”). In the event of any conflict between this Agreement and the Bylaws, the provisions of this Agreement shall prevail.

(a) Duties of Local Advisory Board. The Local Advisory Board shall be responsible for the following as they relate to the RCMH Business:

(i) Oversight and monitoring of both parties’ performance of their obligations under this Operating Agreement and the Lease;

(ii) Determination and awarding of community health grants in conjunction with MCHS as provided in Section 9 below;

(iii) Joint approval with MCHS of the selection of the Rusk County CAO;

(iv) Oversight and monitoring of patient quality and safety programs (as the same are developed and implemented by the appropriate clinical body or bodies at MCHS);

(v) Input to MCHS Board/ Credentialing Committee relating to the hospital's unique circumstances, any significant difference in patient populations and services offered, policies and procedures to make certain that the needs and concerns expressed by medical staff, hospital administration or the Local Advisory Board are taken into account, and mechanisms assuring that such local issues are considered.

(vi) For a period of five years after Closing, approval of any decision to discontinue or substantially diminish any Core Service Lines;

(vii) Approval of any change to the medical staff bylaws applicable to the RCMH Business resulting in a closed medical staff;

(viii) Approval of any material modification of the responsibilities, powers or authority of the Local Advisory Board as set forth in this Agreement; and

(ix) Approval of any decision or course of action that would result in a voluntary relinquishment by the RCMH Business of its critical access hospital status.

(b) Meetings; Communication with MCHS Hospitals Board. The Local Advisory Board will meet at least four times per year, and may convene such additional meetings as it deems appropriate in the discretion of its chair or a majority of its members. MCHS will implement systems and practices designed to facilitate and encourage communication and

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exchange of information and ideas between the MCHS Hospitals, Inc. board of directors and the Local Advisory Board.

8. MCHS HOSPITALS, INC. BOARD. Except with respect to the powers reserved to the Local Advisory Board, the RCMH Business will be operated by MCHS and subject to the exclusive authority of its Board of Directors, including without limitation, the following:

- (a) Defining the philosophy and mission of the RCMH Business;
- (b) Joint approval with the Local Advisory Board of the selection of the CAO;
- (c) Termination of the CAO, provided that before terminating the CAO MCHS will first confer with the chair of the Local Advisory Board regarding such decision;
- (d) Approval of the integration of the strategic plan;
- (e) Approval of any changes in the bylaws and articles of incorporation of MCHS;
- (f) Approval of all fiscal decisions and activities, including, but not limited to, borrowing; purchase or sale of property; budgets; and selection of auditors;
- (g) Approval of a merger, closure or other disposition of the RCMH Business facilities (subject to the County's rights described in Section 3(a)(ii) above); and
- (h) Approval of Local Advisory Board members, as provided in Section 7 above.
- (i) Termination of Local Advisory Board members other than the Physician Member and the County Member.
- (j) Oversight and approval of medical staff applicants for privileges and appointment, considering any input as specified in Section 7(a)(v).

9. COMMUNITY INITIATIVES. MCHS will establish a fund to which it will contribute, for each fiscal year, and amount equal to 10% of the excess of (X) the amount by which the combined operating income (net of operating expenses) of the integrated RCMH Business with the Marshfield Clinic Ladysmith Center business for such fiscal year, including without limitation all specialty and outreach services performed in Rusk County, over (Y) 4% of the total revenues of such combined business for such fiscal year. Such fund will be used to support community health initiatives for the betterment of the Rusk County population, as determined by the Local Advisory Board in conjunction with MCHS. The attached Annex A illustrates this calculation.

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10. **MEDICAL STAFF DEVELOPMENT.** MCHS will work with management of the RCMH Business to integrate the respective primary care physician practices of RCMH and MCHS's Ladysmith Center, mutually assess the medical staff needs of the community, and, working with the MCHS service line leadership and business leadership, develop a community-wide physician staffing plan reasonably acceptable to management of the RCMH Business. The parties will endeavor to complete this staffing plan within the first 180 days after Closing. MCHS agrees to provide the financial support reasonably required to recruit and attract needed medical staff, as identified in the staffing plan.

11. **OTHER NEEDS.** During the Construction Period MCHS will fund reasonable and customary capital requirements and other strategic capital needs of the RCMH Business. It is expected that these may include the following:

- (a) Service line enhancement and development;
- (b) Population health initiatives;
- (c) Information systems, including transition of RCMH's inpatient electronic health record from Epic to Cerner and the outpatient electronic health record from Epic to Cattails; and
- (d) Routine replacement of capital assets.

The above strategic capital expenses are in addition to the costs and investment associated with the Replacement Facility.

12. **INFORMATION TECHNOLOGY PLAN.** MCHS intends to transition RCMH onto its Cerner EHR platform for acute care and MCIS Clinicals platform for ambulatory/medical group as soon as is reasonably possible. In the interest of clarity, it is understood that the investment necessary for the transition of the EHR platform is in addition to the costs and investment associated with the Replacement Facility.

13. **COMPLIANCE PROGRAM.** MCHS will establish and maintain for the RCMH Business a compliance program that meets the requirements of applicable state and federal Laws as well as the Office of Inspector General's Compliance Program Guidance and Supplemental Guidance for hospitals.

14. **CHARITABLE CARE POLICY.** MCHS will implement its system-wide Charity Care policy at RCMH.

15. **BRANDING.** The RCMH Business will be re-branded by MCHS to combine aspects of both organizations, such as, by way of example only, "Marshfield Clinic Health System -- Rusk County Medical Center."

16. **LOSS OF CRITICAL ACCESS STATUS.** Notwithstanding any other provision of this Agreement, in the event that RCMH ceases to be a certified "critical access hospital" in

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compliance with the Medicare Conditions of Participation (“CoPs”) for such hospitals, or if the CoPs for critical access hospitals are amended such that RCMH is no longer eligible for reimbursement as a critical access hospital pursuant to CMS regulations, or the Clinics cease to be “rural health clinics” entitled to reimbursement from CMS on a cost basis, or the reimbursement rates for such hospitals are substantially reduced, then the provisions of Sections 3(a)(ii), 7, 8, 9, 11, 14 and 15 of this Agreement (together with any corresponding provisions of the Bylaws) shall terminate and be of no further force or effect.

17. MISCELLANEOUS.

(a) Expenses. Each party shall pay promptly all expenses it has incurred in connection with the performance of its obligations hereunder, except as such expenses are expressly assumed herein by the other party to this Agreement.

(b) Assignment; Successors and Assigns. The rights and obligations of each party to this Agreement may not be assigned to or assumed by third parties without the express written consent of the other party; provided that this Agreement may be assigned by MCHS to any entity that acquires and succeeds to the ownership and operation of all or substantially all of its assets and business (or the segment of its assets and business of which the RCMH Business is a part) as a going concern, and assumes the obligations of MCHS hereunder. This Agreement shall be binding upon, and inure to the benefit of the County and MCHS and their respective successors and permitted assigns. The Local Advisory Board is an express third party beneficiary to this Agreement.

(c) No Other Third Party Beneficiaries. Except as provided in the preceding paragraph (b), none of the provisions contained in this Agreement are intended by the parties, nor shall they be deemed, to confer any benefit or rights on any person not a party to this Agreement, including without limitation any right to enforce any provision of this Agreement. For avoidance of doubt, it is the intent of the parties that the provisions and limitations of this Agreement, including Sections 7, 8 and 9, shall apply as between the parties hereto only and that the failure of MCHS to comply with those or any other provisions of this Agreement shall not impair or invalidate, as between MCHS and any third party, any action taken by MCHS or the MCHS Board which is otherwise within its power or authority and otherwise validly taken, with respect to such third party and not with respect to the parties hereto.

(d) Confidentiality. Each party shall keep confidential and not use or disclose to others, except for professional advisors or as consented to in writing by the non-disclosing party or as required by applicable Law, any proprietary information, confidential business information (including the results of any third-party or internal audits), insurance or third-party payer data, utilization, reimbursement, or cost data, or trade secrets of the other party; provided that MCHS may disclose information regarding the RCMH Business and any information that is included among the Purchased Assets, as is reasonably necessary or appropriate in the conduct of the RCMH Business following the Closing, subject to applicable Laws. This confidentiality provision will survive for a period of five (5) years following the Closing.

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(e) No Waiver. No delay on the part of a party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude other or further exercise thereof, or the exercise of any other right, power or privilege.

(f) Amendments and Waivers. Any change or amendment to this Agreement shall be effective only if in writing and signed by County and MCHS. Any waiver hereunder is effective only if in writing and signed by the party granting the waiver.

(g) Severability. If any provision of this Agreement is held for any reason to be unenforceable, the remainder of this Agreement shall remain in full force and effect.

(h) Headings. The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

(i) Governing Law. This Agreement is made in the State of Wisconsin and shall be governed by and construed in accordance with the internal laws of the State of Wisconsin, without reference to principles of conflicts of law.

(j) Jurisdiction; Waiver of Jury Trial. Each party hereby submits to the exclusive jurisdiction of the United States District Court for the Western District of Wisconsin or any court of the State of Wisconsin located in Dane County, Wisconsin in any action, suit or proceeding arising under or in connection with this Agreement or any of the transactions contemplated hereby. Process and pleadings mailed to a party at the address provided in or pursuant to the Purchase Agreement shall be deemed properly served and accepted for all purposes. ***Each party acknowledges and agrees that any controversy that may arise under this Agreement is likely to involve complicated and difficult issues, and therefore each party hereby irrevocably and unconditionally waives any right such party may have to a trial by jury.***

(k) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile or electronic .PDF copies of signatures shall be deemed originals for all purposes hereof and that a party may produce such copies, without the need to produce original signatures, to prove the existence of this Agreement in any proceeding brought hereunder.

(l) Entire Agreement. This Agreement, together with the Lease and the Purchase Agreement, together with the schedules and exhibits and Annexes hereto and thereto, contains the entire agreement of the parties concerning the transactions contemplated by this Agreement.

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IN WITNESS WHEREOF, the undersigned have executed this Operating Agreement effective as of the day and year first above written.

**MARSHFIELD CLINIC HEALTH
SYSTEM, INC.**

RUSK COUNTY, WISCONSIN

By: _____

By: _____

Annex A

Community Initiatives Fund Illustration

Following illustrates the calculation of the annual contribution to community health initiatives as described in Section 9 of the Operating Agreement:

Assume for fiscal year 20XX, the combined operations performed as follows:

Operating Revenue	\$ 35,000,000
Operating Expenses	\$ 33,250,000
Operating Income	\$ 1,750,000
Operating income at 4%	\$ 1,400,000
Income in excess of 4%	\$ 350,000
Funding for Community Health	\$ 35,000