

Resolution FY21-17

Resolution Approving South Florida Health Credit Facility and Associated Bank Account

WHEREAS, it has been proposed that the North Broward Hospital District, a special taxing district created pursuant to ch. 27438, Laws of Florida, which was recodified in Chapter 2006-347, Laws of Florida, as amended (the “District”), enters into (i) a Senior Secured Credit Agreement (the “Credit Agreement”), by and between the District, as Lender, and South Florida Health, Inc., a Florida not-for-profit corporation (the “Borrower”), and (ii) a Security Agreement, by and between the District and the Borrower (the “Security Agreement”), pursuant to which the District will provide a credit facility to the Borrower in the aggregate principal amount of Ten Million Dollars (\$10,000,000.00) (the “Facility”), in accordance with the terms and conditions set forth in the term sheet attached hereto as Exhibit A and incorporated herein by reference (the “Term Sheet”);

WHEREAS, it has been proposed that the District opens a separate bank account (the “Bank Account”) with Wells Fargo Bank, N.A., a national banking association (“Wells Fargo”), consisting of unrestricted funds to provide the loans contemplated under the Facility in accordance with the terms and conditions of the Credit Agreement;

WHEREAS, at its January 29, 2020 regular meeting, the Board of Commissioners (the “Board”) of the District adopted Resolution FY20-15, Financial Institution Resolution, with respect to certain banking powers of the District (the “Banking Resolution”);

WHEREAS, the Banking Resolution requires Board approval to open financial accounts and any such financial accounts must be with a “qualified public depository,” as such term is defined in Section 280.02 of the Florida Statutes;

WHEREAS, Wells Fargo has been deemed a “qualified public depository” by the Florida Department of Financial Services, Division of Treasury, and the Board wishes to authorize the District to open the Bank Account with Wells Fargo;

WHEREAS, the Board has determined that it is in the best interest of the District, and it serves a public purpose, (i) to enter into the Credit Agreement and the Security Agreement and to provide the Loan to the Borrower, in accordance with the terms and conditions set forth in the Term Sheet, and to perform the transactions contemplated thereby (the “Transactions”), and (ii) to open the Bank Account; and

WHEREAS, unless context otherwise requires, capitalized terms used, but not defined herein, have the meanings ascribed to such terms in the Amended and Restated Bylaws of the North Broward Hospital District and its accompanying Codified Resolutions of the Board of Commissioners of the North Broward Hospital District.

NOW, THEREFORE, BE IT RESOLVED, by the Board that:

1. The District is hereby authorized to agree to, execute, and deliver the Credit Agreement and the Security Agreement in accordance with the terms and conditions set forth in the Term Sheet, and to provide the Facility to the Borrower and perform the other Transactions.
2. The Chief Operating Officer of the District (the “COO”) shall be authorized to execute and deliver the Credit Agreement and the Security Agreement in accordance with the terms and conditions set forth in the Term Sheet, and any other agreements that he or she deems are

necessary or advisable to perform the Transactions, on behalf of the District, with any modifications thereto as he or she shall deem necessary or advisable in his or her sole discretion, with such approval to be evidenced conclusively by such execution and delivery.

3. In addition to, and without limiting the foregoing, the COO be, and he or she hereby is, for and in the name and on behalf of the District, authorized to take, or cause to be taken, such further action, to pay such fees and expenses, to make such filings or certifications, and to execute and deliver, or cause to be delivered, all such agreements, instruments and documents, in each case, as he or she may deem necessary or appropriate in order to effect the purpose and to carry out the intent of this Resolution (as conclusively evidenced by the taking of such action or the execution and delivery of such instruments, as the case may be), and any and all actions heretofore taken by the officers or agents of the District in connection with the subject of this Resolution be, and each of them hereby is, ratified, confirmed and approved in all respects as the act and deed of the District.
4. The Treasurer of the District (the “District Treasurer”) is hereby authorized and empowered to, in the name of, and on behalf of, the District, submit an application (the “Application”) for the Bank Account to Wells Fargo for, in the name of, and on behalf of, the District, and to make arrangements for the administration of the Bank Account.
5. The District Treasurer and the Secretary/Treasurer of the Board are each authorized and empowered, in the name of, and on behalf of, the District, to execute and deliver any incumbency certificate requested or required by Wells Fargo in connection with the Application.
6. The District Treasurer is authorized to prepare, execute, deliver and file, as appropriate, any and all documents, in such form as the District Treasurer shall approve, the execution, delivery or filing by the District Treasurer to be conclusive evidence of such approval, and to take all such further action as the District Treasurer considers necessary or desirable, to carry out the purposes and intent of this Resolution.
7. The foregoing resolution and the authority thereby conferred shall remain in full force and effect until written notice of revocation or modification shall be received by Wells Fargo; that the District Treasurer and the Secretary/Treasurer of the Board are hereby authorized and directed to certify to Wells Fargo the foregoing resolution, the names of the officers and their respective designees, any changes from time to time in said officers or designees and specimens of their respective signatures; and that Wells Fargo may conclusively assume that the persons at any time so certified to it continue as such until receipt by Wells Fargo of written notice to the contrary.
8. In addition to, and without limiting the foregoing, the District Treasurer be, and he or she hereby is, for and in the name and on behalf of the District, authorized to take, or cause to be taken, such further action, to pay such fees and expenses, to make such filings or certifications, and to execute and deliver, or cause to be delivered, all such agreements, instruments and documents, in each case, as he or she may deem necessary or appropriate in order to effect the purpose and to carry out the intent of this Resolution (as conclusively evidenced by the taking of such action or the execution and delivery of such instruments, as the case may be), and any and all actions heretofore taken by the officers or agents of the District in connection with the

subject of this Resolution be, and each of them hereby is, ratified, confirmed and approved in all respects as the act and deed of the District.

9. This Resolution is hereby effective immediately upon the ratification by the Board.
10. This Resolution hereby supersedes, amends, replaces, and repeals any conflicting resolutions or conflicting policies previously adopted by the Board.

DULY ADOPTED this ____ day of March, 2021.

Time Adopted _____ PM

EXHIBIT A

Term Sheet

**SOUTH FLORIDA HEALTH, INC.
\$10,000,000 SENIOR SECURED CREDIT FACILITY
SUMMARY OF PRINCIPAL TERMS AND CONDITIONS**

Set forth below in this term sheet (this “**Term Sheet**”) is a summary of the principal terms and conditions for the Facility.

Borrower: South Florida Health, Inc. a Florida not-for-profit corporation (the “**Borrower**”).

Lender: North Broward Hospital District d/b/a Broward Health, a special taxing district created pursuant to Chapter 27438, Laws of Florida, which was recodified in Chapter 2006-347, Laws of Florida, as amended (the “**Lender**”).

Closing Date: The date on or before April 1, 2021 on which all conditions precedent set forth on **Schedule A** hereto are satisfied (the “**Closing Date**”).

Facility: The senior secured revolving credit facility (the “**Facility**”) in an aggregate principal amount of \$10,000,000.00.

Termination Date: The Facility shall terminate on the ten year anniversary of the Closing Date (the “**Termination Date**”).

Purpose and Availability: The loans under the Facility (the “**Loans**”) shall be available on and after the Closing Date, in US Dollars, for the Borrower’s and its subsidiaries’ working capital requirements, acquisition costs, capital contributions, transaction costs, and other general corporate purposes. Loans may be borrowed, repaid and reborrowed.

Interest: Interest on Loans will be at an annual rate equal to the twelve month London Interbank Offered Rate (“**LIBOR**”) for corresponding deposits of US dollars, plus 1.5%; *provided, however*, that LIBOR shall not be less than 1.0% per annum, nor greater than 8.0% per annum.

LIBOR will be determined by reference to the rate published by ICE Benchmark Administration Limited for the applicable interest period. LIBOR borrowings will require five (5) business days’ prior notice and will be in minimum amounts to be agreed.

Interest shall be paid quarterly in arrears and will be calculated on the basis of the actual number of days elapsed in a 360-day year; *provided, however*, that, so long no default by the Borrower has occurred, which is continuing, the Borrower’s obligation to make quarterly interest payments shall be deferred until the third anniversary of the Closing Date at which time all accrued and unpaid interest on the Loan shall be due and payable.

Overdue amounts of principal under the Facility shall bear interest at 10.0% above the otherwise applicable rate. Overdue interest, fees and other

amounts shall bear interest at 10.0% above the rate applicable to Loans. All such interest shall be due on demand.

**LIBOR
Replacement**

If the Lender determines in good faith (which determination shall be conclusive, absent manifest error) that: (a) by reason of circumstances affecting the London Interbank Eurodollar market, adequate and fair means do not exist for ascertaining LIBOR; (b) LIBOR does not accurately reflect the cost to the Lender of the Loans; or (c) a Regulatory Change (as hereinafter defined) shall, in the reasonable determination of the Lender, make it unlawful or commercially unreasonable for the Lender to use LIBOR as the index for purposes of determining the applicable interest rate, then LIBOR shall be replaced with an alternative or successor rate or index chosen by the Lender in its reasonable discretion. “**Regulatory Change**” (i) a public statement or publication of information by or on behalf of the administrator of LIBOR announcing that such administrator has ceased or will cease to provide LIBOR, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR; (ii) a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for LIBOR, a resolution authority with jurisdiction over the administrator for LIBOR or a court or an entity with similar insolvency or resolution authority over the administrator for LIBOR, which states that the administrator of LIBOR has ceased or will cease to provide LIBOR permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR; or (iii) a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR announcing that LIBOR is no longer representative.

**Repayment of
Principal**

The Borrower shall pay to the Lender the unpaid interest on and principal amount of each Loan on or prior to the Termination Date.

**Voluntary
Prepayments:**

Loans may be prepaid, in whole or in part without premium or penalty, in minimum amounts to be agreed, at the option of the Borrower at any time upon one business day’s prior notice.

**Mandatory
Prepayments:**

The following amounts shall be applied to prepay the Loans:

(a) 25.0% of the net cash proceeds of all equity sales, asset sales or other dispositions of property by the Borrower or any of its subsidiaries after the Closing Date and subject to the right of the Borrower to reinvest 100% of such proceeds, if such proceeds are reinvested (or committed to be reinvested) within 180 days and, if so committed to be reinvested, so long as such reinvestment is actually completed within 360 days thereafter;

(b) 100% of the net cash proceeds received by the Borrower or any of its subsidiaries from the issuance of debt after the Closing Date (other than exceptions to be agreed); and

(c) commencing with the first full fiscal year of the Borrower to occur after the Closing Date, and for each fiscal year thereafter, 25.0% of excess cash flow (to be defined) of the Borrower and its subsidiaries.

Mandatory prepayments will be applied to prepay outstanding Loans under the Facility, with no corresponding permanent reduction of commitments under the Facility.

Collateral:

The Facility will be secured by a valid and perfected first priority lien (subject to liens permitted under the Loan Documents referred to below) on substantially all assets of the Borrower and its subsidiaries, whether owned on the Closing Date or thereafter acquired (collectively, the “**Collateral**”), including, without limitation:

(a) All equity interests, options, rights of first refusal, warrants and debt held by the Borrower or any of its subsidiaries;

(c) Substantially all tangible and intangible assets of the Borrower and its subsidiaries, including, but not limited to, inventory, accounts receivable, equipment, real property, fixtures, general intangibles (including contract rights), intercompany debt, chattel paper, insurance policies, licenses, permits, intellectual property, documents, instruments, indemnification rights, tax refunds, commercial tort claims, letter of credit rights, hedge agreements, investment property, deposit and securities accounts and cash, wherever located (subject to exclusions and limitations to be agreed); and

(c) All proceeds and products of the foregoing.

All pledges, security interests and mortgages covering the Collateral shall be created on terms and pursuant to documentation reasonably satisfactory to the Lender.

Notwithstanding the foregoing, the following assets will be excluded from Collateral: (i) all leasehold interests, (ii) all contracts, licenses and permits to the extent the grant of a security interest therein is prohibited by law or by the terms of such contracts, licenses and permits, in each case after giving effect to the Uniform Commercial Code, and (iii) upon the Borrower’s request, assets for which the Lender reasonably determines that the cost, burden or consequences (including adverse tax consequences) of obtaining a perfected security interest in such assets substantially exceeds the practical benefit of such collateral to the Lender.

**Loan
Documentation:**

The definitive loan documentation for the Facility (the “**Loan Documents**”) shall contain the terms and conditions set forth herein and such other terms as the Borrower and the Lender shall agree. The representations and warranties, covenants and events of default included in the Loan Documents shall be, in each case, applicable to the Borrower and its subsidiaries.

Conditions Precedent to Initial Borrowings:	The effectiveness of the loan agreement and funding the initial Loans on the Closing Date shall be subject to the conditions precedent set forth on <u>Schedule A</u> hereto.
Conditions Precedent to all Borrowings:	<p>Each extension of credit under the Facility shall be subject to:</p> <p>(a) Written notice of each borrowing pursuant to a Notice of Borrowing at least five (5) business days prior to the requested date of any such borrowing;</p> <p>(b) Absence of any default or event of default before, or after giving effect to, such borrowing; and</p> <p>(c) The accuracy in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that are already qualified or modified by materiality in the text thereof) of the representations and warranties of the Borrower (other than the litigation representations and warranties, which shall be made only on the Closing Date).</p>
Representations and Warranties:	Representations and warranties applicable to the Borrower and its subsidiaries shall include the following (subject to thresholds and/or exceptions to be agreed: corporate existence; corporate power and authority; non-contravention; authorization and enforceability of the Loan Documentation; no conflicts with law or contractual obligations; no material adverse change with respect to the Borrower and its subsidiaries; no insolvency of the Borrower or its subsidiaries; compliance with applicable laws and regulations; accuracy and completeness of disclosure; ownership of property; no liens; no material litigation; no default or event of default; and validity, priority and perfection of liens and security interests in the Collateral.
Affirmative Covenants:	Affirmative covenants applicable to the Borrower and its subsidiaries shall include the following (subject to exceptions to be agreed): delivery of annual audited financial statements beginning in the fiscal year ending December 31, 2022 and quarterly unaudited financial statements beginning in the quarter ending March 31, 2022; delivery of certificates, notices and other information (including notices of default and litigation); compliance with applicable laws and regulations; payment of taxes and other obligations; use of proceeds; preservation of existence, permits, licenses and approvals; additional collateral; performance of material contracts; and further assurances.
Negative Covenants:	<p>Negative covenants applicable to the Borrower and its subsidiaries shall include the following:</p> <p>(a) Limitations on debt and guarantees;</p> <p>(b) Limitations on liens and further negative pledges;</p> <p>(c) Limitations on mergers, consolidations and other fundamental changes; and</p>

(d) No modification or waiver of material documents (including, without limitation, charter documents of the Borrower and its subsidiaries) in a manner materially adverse to the Lender.

Events of Default:

Events of default applicable to the Borrower and its subsidiaries shall include the following (subject to grace periods, thresholds and exceptions to be agreed): failure to pay principal when due or interest or other amounts after five (5) business days; breach of representations, warranties or covenants (subject, in the case of certain affirmative covenants to a grace period of ten days after receipt of written notice from the Lender); cross-default and cross-acceleration to material debt; bankruptcy and insolvency events; material judgment defaults; actual or asserted invalidity or impairment of any guarantees or security documents; and occurrence of a material adverse change (to be defined).

Amendments:

Amendments and waivers of the provisions of the Loan Documents shall require the approval of the Lender.

Expenses and Indemnification:

The Borrower shall pay (a) all reasonable out-of-pocket expenses of the Lender incurred in connection with the preparation, execution, delivery, administration, amendment or waiver of the Loan Documents (including the reasonable fees, disbursements and other charges of counsel to the Lender); and (b) all reasonable out-of-pocket expenses of the Lender (including the fees, disbursements and other charges of counsel to the Lender) in connection with the enforcement of the Loan Documents, including in connection with workouts or restructurings.

The Lender (and its affiliates and their respective officers, directors, employees, advisors, and agents) will be indemnified and held harmless against any loss, liability, cost or expense, including the reasonable fees, disbursements and other charges of counsel to the indemnified parties incurred in connection with the financing contemplated hereby or the use of proceeds of the Facility, except to the extent they result from such person's gross negligence, willful misconduct or a material breach by the indemnified party of the Loan Documents.

Governing Law and Forum:

State of Florida.

Waiver of Jury Trial:

All parties to the Loan Documents waive the right to trial by jury.

Counsel to the Lender:

Akerman LLP

SCHEDULE A

Conditions precedent to initial borrowings under the Facility shall include:

- (a) **Loan Documentation.** Delivery of executed loan documentation for the Facility on terms acceptable to the Lender and consistent with the terms of this Term Sheet.
- (b) **Collateral.** Delivery of an executed Security Agreement required from the Borrower in form, scope and substance satisfactory to the Lender. The Lender shall have a first priority perfected security interest (subject to permitted liens) in all Collateral and (ii) all required filings, recordations and searches with respect to such security interests shall have been duly made.
- (c) **Customary Ancillary Documents.** Delivery of customary evidence of authority, corporate documents, documents from public officials, and certificates as to the Borrower.