

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

In re: CHARTERCARE HEALTH :
PARTNERS FOUNDATION, :
ROGER WILLIAMS HOSPITAL and :
ST. JOSEPH HEALTH SERVICES OF :
RHODE ISLAND, INC. :

C.A. No: KM-2015-0035

**ORDER PRESERVING ASSETS PENDING LITIGATION
AND SETTING SCHEDULE FOR HEARING ON MOTION TO INTERVENE**

In accordance with the agreement of Proposed Intervenors and CharterCare Foundation (“CCF”), and for the reasons discussed at the hearing on June 28, 2018, the Court hereby orders as follows:

1. All funds presently held by the Rhode Island Foundation (“RIF”) pursuant to a so-called Instrument of Transfer (attached hereto at Exhibit A) dated April 14, 2015, or otherwise (such funds being, hereinafter, “Fund Corpus”) shall continue to be held, managed and administered by RIF pursuant to the terms of such Instrument of Transfer (including the annual administrative support fee) until such time as this Court, or another Court of competent jurisdiction,¹ finally adjudicates on the merits Proposed Intervenors’ claims to entitlement to the Fund Corpus² and either all appeals have been exhausted or the time for taking any appeals has expired without any appeals taken, with distributions only as provided in paragraph 2 below.
2. RIF may continue to make distributions to CCF, on an annual basis each December, on the Fund Corpus consisting of not more than 4.5% of the Fund Corpus (“Fund Corpus Income”) pursuant to the terms of the Instrument of Transfer. From the Fund Corpus Income, CCF may continue to pay the following: (1) expenses incurred in the ordinary course of business, including rent, salaries, utilities, insurance, usual accounting and legal fees, and the same types of expenses CCF has typically paid as part its operations; (2) its legal fees in this action and the Related Actions; and (3) its usual charitable grants as awarded by CCF each year. The forgoing payments and all other expenditures in total shall not exceed the Fund Corpus Income received each

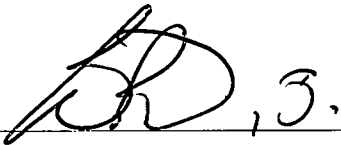
¹ Besides proposing to intervene in the present action, the Proposed Intervenors have initiated suits in the United States District Court for the District of Rhode Island, Civil Action No. 18-cv-00328-WES-LDA, and in the Rhode Island Superior Court, Civil Action No. PC-2018-4386. The three actions together are called “the Related Actions.”

² As of April 30, 2018, CCF’s balance at RIF was \$8,783,572.83.

year by CCF from RIF, except as set forth in the second sentence of paragraph 3 below.

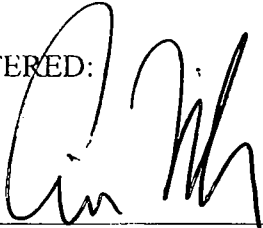
3. Payments received by CCF from the Malmstead Foundation will be paid by CCF to RIF and become part of the Fund Corpus. Miscellaneous charitable gifts, grants, or bequests received by CCF each year up to a grand total of \$25,000 annually may be retained and paid by CCF, and shall be excluded from the cap set forth in paragraph 2, and any excess shall be paid by CCF to RIF.
4. CCF will file its objection to the Motion to Intervene and its supporting memorandum by July 24, 2018. The Proposed Intervenors will file any reply by July 31, 2018. The Court will hear the motion soon thereafter.
5. This Order is entered (a) without prejudice to Proposed Intervenors' claim to a right to intervene herein; (b) without prejudice to Proposed Intervenors' claims herein or in another action (including the Related Actions) to the Fund Corpus; (c) without prejudice to CCF's denial that the Proposed Intervenors have a right to intervene herein; and (d) without prejudice to CCF's denial herein or in another action (including the Related Actions) that the Proposed Intervenors are entitled to the Fund Corpus.

ORDERED:



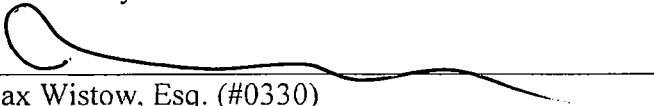
Stern, J.
Dated: 6/29/18

ENTERED:

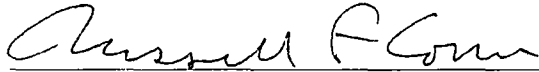


Dep. Clerk
Dated: 6/29/18

Presented by:



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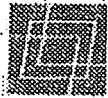
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Exhibit A



**RHODE ISLAND
FOUNDATION**

Lead, Transform, Inspire

**RHODE ISLAND FOUNDATION
INSTRUMENT OF TRANSFER
CharterCARE Foundation Fund**

Subject to the Option to Recover in Part II below, as of this 14th day of April, 2015, CharterCARE Health Partners Foundation ("Donor") hereby irrevocably transfers, conveys, assigns and pays over to the Rhode Island Foundation, a Rhode Island non-profit corporation (the "Foundation"), and the Foundation accepts, the property described in Exhibit A hereto, to create the CharterCARE Foundation Fund, (the "Fund"). The Fund shall be treated as an anonymous fund by the Foundation until further notice by the Donor. Additional contributions to the Fund may be made by us or others provided the contributed property is acceptable to the Foundation.

The Fund, together with any additions thereto, shall be held, managed and administered by the Foundation, either directly or through the use of an agency account, employing a corporate fiduciary or investment advisor, as the Foundation may deem appropriate, from time to time.

The assets hereby contributed shall be held by the Foundation, and the income and principal of the Fund shall be commingled with other Foundation assets held by the Foundation. The Fund assets shall be accounted for separately and any earnings from the common fund accruing to the Fund shall be credited to the account of the Fund.

Annual distributions from the Fund, as determined by the Foundation's spending rule in effect at that time, which at this time is 4.5% of the Fund's 16 trailing quarter average market balance, shall be paid to or for the support of Donor, a tax-exempt charitable organization under Internal Revenue Code §501(c)(3).

Notwithstanding the foregoing, Donor understands that the Articles of Association of the Foundation and applicable tax laws require that the Board of Directors of the Foundation have variance power over the assets donated to the Fund should "circumstances have so changed since the execution of this instrument as to render unnecessary, undesirable, impractical or impossible a literal compliance with the terms of this instrument." It is also understood that no restrictions or conditions may be imposed upon the administration of the Fund which will prevent the Foundation from employing the transferred assets or income therefrom in furtherance of its exempt status. The Foundation also retains the power in the Foundation's sole discretion to modify or withhold any distribution of income or principal if such distribution would otherwise fail to qualify for a charitable purpose as defined in Section 170(c) of the Internal Revenue Code. It is the policy of the Foundation that with respect to the Fund, the Foundation will seek the approval of the Rhode Island Attorney General prior to exercising the foregoing variance power. In all respects the use of the Fund, together with any additions thereto contributed by the Donor or by any third-party, shall be in

accordance with the terms of this instrument, the charitable purposes of the Foundation, and subject to the approval of the Foundation's Board of Directors.

The provisions of this instrument directing distributions from the Fund to be made as determined by the Foundation's spending rule shall apply, irrespective of the provisions of any state's Uniform Management of Institutional Funds Act or Uniform Prudent Management of Institutional Funds Act, as currently in force or as hereinafter enacted, amended or superseded. The Foundation assumes no responsibility as to the ability of the Donor to access principal, either under the Uniform Prudent Management of Institutional Funds Act or any law. Donor shall indemnify the Foundation against any claims or damages relating to any violations of donor restrictions on any portion of the Fund.

Donor attests that this transfer has been duly approved by all appropriate corporate action, including without limitation Donor's Board of Directors as described in the attached Certificate of Secretary.

II. Option to Recover: Donor hereby acknowledges that the property transferred and contributed to the Foundation shall belong to the Foundation in perpetuity, subject to changes in circumstances under which the Donor in its discretion may terminate part or all of the Fund and to have part or all of the Fund paid as a distribution to Donor.

Donor acknowledges and accepts that, to encourage permanence, while still allowing flexibility, the following provisions shall apply with respect to any distribution of the principal of the Fund made to Donor at the direction of Donor.

(A) Directed distributions are allowed with ninety (90) days advance notice.

(B) In addition to the annual Foundation administrative support fee, a withdrawal fee shall apply as follows:

- (i) Year one: 5% of amount distributed.
- (ii) Year two: 4% of amount distributed.
- (iii) Year three: 3% of amount distributed.
- (iv) Year four: 2% of amount distributed.
- (v) Year five and thereafter: 1% of amount distributed.

III. All funds are subject to the Foundation's annual administrative support fee. Provided that the initial funding amount of the Fund from Donor shall be a minimum of eight-million dollars (\$8,000,000.00), the Foundation's annual administrative support fee on the Fund shall be .65% of the Fund's 16 trailing quarter average market balance. The initial funding amount as described in this paragraph shall be defined as all funds received by Donor for the Fund by September 30, 2015.

The following attachments are incorporated herein and made a part of this instrument:

- (A) The Foundation Investment Policy Statement, as currently in effect; and
- (B) The most recent quarterly report of Prime Buchholz, the Foundation's current investment consultant.

This instrument shall be construed and enforced in accordance with the laws of the State of Rhode Island and all provisions of the Articles of Incorporation and Bylaws of the Foundation as they may be amended from time to time.

Donor:

~~Charter~~ CARE Health Partners Foundation


Board Chair

4/14/15
Date


Board Treasurer

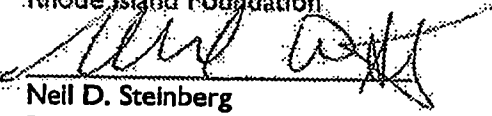
4/14/15
Date


Executive Director

4/14/15
Date

Accepted:

Rhode Island Foundation


Neil D. Steinberg
President and CEO

4/17/15
Date

Exhibit A

RHODE ISLAND FOUNDATION

INSTRUMENT OF TRANSFER

CharterCARE Foundation Fund

Cash Transfer:- \$5,752,655.00 -- May 28, 2015

Cash Transfer:- \$1,974,537.44 -- May 29, 2015