

CITY OF LAKEWOOD

Summary of Relevant Provisions in Lakewood Hospital Governing Agreements

- I. Amended and Restated Lease by and between the City of Lakewood (the “City”) and Lakewood Hospital Association dated as of December 23, 1996 (the “Lease”) for Lakewood Hospital (the “Hospital”)
- A. Type of Lease - The Lease shall be deemed and construed to be a "net lease". LHA shall pay absolutely net, during the Lease Term, the Basic Rent, Additional Payments and all other amounts payable under the Lease, free of any deductions, and without abatement or set-off, other than those for which provision is made expressly therein. [Sec. 14.3]
- B. Rent
1. Basic Rent [Sec. 3.1]
2. Reimbursements to the City or CCF – Payment for or reimbursement or prepayment of any and all reasonable costs, expenses and liabilities incurred:
- a. in satisfaction of any obligations of LHA under the Lease; [Sec. 3.2(b)(i)]
- b. as a result of a request by LHA or a requirement of the Lease; [Sec. 3.2(b)(ii)] or
- c. in the defense of any action or proceeding with respect to the Hospital or in enforcing the Lease. [Sec. 3.2(b)(iii)]
- C. Primary LHA Obligations
1. Required Services
- a. LHA agrees to continue to provide residents of the City from facilities located within the City acute care medical/surgical services (including for children and adolescents), obstetrical/gynecological services, 24 hours a day emergency room providing trauma services, intensive care services and rescue square/paramedic services as required by the Lease. [Recitals, pg. 3]
- b. Definition of “Required Services” – (i) obstetrical/gynecological services, (ii) 24 hour a day emergency room providing trauma services, (iii) rescue squad/paramedic services, (iv) intensive care services and (v) acute care medical/surgical services (including,

without limitation, care for children and adolescents), of the nature then generally provided by a community hospital in communities comparable to the City; or such services as may result from amendments to this definition pursuant to Section 9.16 hereof. The term "Required Services" does not include the magnitude or level of service, such as hours of service, or the manner (including changes in technology) by which the types of services are provided; provided, however, that the change in magnitude or levels of services does not, as a practical matter, result in the significant reduction in such service so as to be an effective elimination of such service. [Sec. 1.2]

- c. At all times throughout the Lease Term, LHA covenants that it shall ... administer, operate, maintain, repair, occupy and use the Hospital in accordance with the terms of the Lease; and faithfully and efficiently administer, operate and maintain as Hospital Facilities so much of the Hospital as from time to time are Hospital Facilities rendering the Required Services and related services and care, at all times as facilities are available, without discrimination as to race, sex, creed, color or national origin, to patients who are residents of the City and all members of the general public as facilities are available and as professional opinion determines the necessity thereof. [Sec. 9.11(b)]
- d. At all times throughout the Lease Term, LHA covenants that it shall ... continue to provide the Required Services within the City and to utilize the Hospital as a healthcare facility subject to discontinuance pursuant to Section 9.16 of the Lease. [Sec. 9.11(d)]
- e. At all times throughout the Lease Term, LHA covenants that it shall ... continue to provide the Required Services within the City and other offered healthcare services to residents of the City without regard to their ability to pay based on eligibility guidelines established by the Community Services Administration of the United States Department of Health and Human Services or any successor thereto or, if there is no successor, then community services standards used by hospitals servicing comparable communities. [Sec. 9.11(h)]
- f. Changes to Required Services - LHA agrees that it will maintain the Required Services within the City and that it will not terminate any Required Service within the City unless it shall first have notified the City of its intent to terminate a Required Service, the date of the proposed termination, which shall not be earlier than the sixtieth day following such notice, and the reasons for the

PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT
4.21.2015

proposed termination. Such termination may be effected on or after the proposed termination date so long as there shall not have become effective an ordinance of the City directing LHA not to terminate the Required Service which was the subject of the notice. [Sec. 9.16] [NOTE: According to the documentation provided, the Required Services were modified in 2010 to eliminate trauma services and inpatient pediatrics.]

- 2. Provision of Rescue Squad and Paramedic Services - At all times throughout the Lease Term, LHA covenants that it shall... continue the provision of rescue squad and paramedic services as described in Exhibit B to the Lease. [Sec. 9.11(e), Ex. B]
- 3. Standards for Quality and Affordability of Care - At all times throughout the Lease Term, LHA covenants that it shall... maintain as one of its objectives providing high quality, affordable healthcare services with rates and charges consistent with comparable facilities in Cuyahoga County. [Sec. 9.11(i)]
- 4. Maintenance
 - a. LHA agrees to maintain the Hospital in good repair and operating condition and agrees to replace equipment and other personal property necessary to the activities then to be carried on in operation of the Hospital. [Recitals, pg. 2]
 - b. LHA covenants and agrees to obtain and maintain within the Hospital all movable furnishings, equipment and other personal property, in addition to movable furnishings, equipment and other personal property made available by City, essential to the then operation of the Hospital. LHA further covenants and agrees to replace promptly any worn out or obsolete movable furnishings, equipment or other personal property used by LHA in connection with the administration, operation and maintenance of the Hospital with movable furnishings, equipment or other personal property of comparable operating capacity and for the same purpose or use, unless in the determination of LHA the worn out or obsolete movable furnishings, equipment or other personal property are no longer essential to the then operation of the Hospital. LHA covenants and agrees that any movable furnishings, equipment or other personal property constituting part of the Hospital and necessary for the then operation of the Hospital and the provision of the then Required Services will not be removed or relocated without securing a replacement therefor. [Sec. 4.4]

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT
4.21.2015**

- c. LHA covenants and agrees that the suitability taken as a whole of the Hospital to provide the Required Services will not be impaired. LHA shall, consistent with Sections 4.3 and 4.4 of the Lease, have the privilege from time to time of substituting or replacing personal property or fixtures comprising a part of the Hospital for any portions of the Hospital, provided that the personal property or fixtures so substituted or replaced shall not impair the value of the Hospital or its utility in providing the Required Services..... **Any such substituted or replaced property or fixtures shall become the property of the City,** subject to any permitted security interest therein, and be included under the terms of the Lease. All buildings, structures, improvements, machinery, equipment and other property which shall be constructed, placed or installed in or upon the Hospital as an addition to or as a substitute for or in renewal or replacement thereof, shall become a part of the Hospital and be included under the terms of the Lease. [Sec. 6.2]

D. Primary City Rights

1. Approval of Changes to the Required Services, as discussed above. [Sec. 9.16]
2. Enforcement of the Definitive Agreement – LHA agrees that it will enforce its rights against CCF (defined below) given to it in Article 2 of the Definitive Agreement (defined below) and **in the event that CCF should fail to observe its obligation to LHA under that Article 2, the LHA shall promptly notify the City of that failure. LHA agrees that it will not terminate or purport to terminate the Definitive Agreement or permit CCF to terminate or purport to terminate the Definitive Agreement,** in both cases pursuant to Section 10.2 of the Definitive Agreement, without the prior approval of the City evidenced by an ordinance or resolution of the City. [Sec. 14.15]
3. Seats on LHA Board – The Mayor and two members of Council shall be representatives of the City and members ex officio of the LHA Board with all privileges and emoluments of such membership including voting rights. [Sec. 9.2(j)(ii)(1)]
4. **City Remedies Following an Event of Default – (i) acceleration of rent [Sec. 13.2(a)]; (ii) eviction and recovery of unpaid rent [Sec. 13.2(b)]; and (iii) self-help [Sec. 13.9].**

E. Disposition of Property Upon Termination

1. At the end of the term of the Lease..., **LHA shall retire or make provision for retiring all of LHA's indebtedness and pay or cause to be paid all of its**

liabilities and shall relinquish the real and personal property of the Hospital and all **monies, accounts and inventories** then held by LHA to the City. [Recitals, pgs. 2]

2. Subject to Section 14.1, on or after expiration of the Lease term or termination of the Lease, **LHA may dissolve and if it dissolves, after payment of all its obligations, shall transfer all of its then assets to the City or to another nonprofit corporation organized for the purpose of operating the Hospital provided that such transfer shall not have adverse federal income tax consequences.**
 3. Upon the expiration of the Lease Term or the termination of the Lease, **LHA covenants and agrees to surrender the Hospital to the City peaceably and promptly, together with all appurtenances thereto and all assets and obligations of LHA including **movable equipment, furnishings and other personal property** in or on the Hospital, in as good condition as prevailed at the time LHA was put in full possession thereof. [Sec. 14.1] [NOTE: This provision applies to all moveable equipment, furnishings and other personal property purchased as replacement property pursuant to Sec. 4.4 and all other moveable equipment, furnishings and other personal property purchase by LHA during the Lease Term.]**
- F. Personal Liability – No representation, warranty, covenant, agreement, obligation or stipulation contained in the Lease or other instruments or documents in connection therewith shall be deemed to constitute a representation, warranty, covenant, agreement, obligation or stipulation of any present or future trustee, member, officer, agent or employee of LHA in an individual capacity, and to the extent authorized and permitted by applicable law, no official executing or approving LHA’s participation in the Lease shall be liable personally under the Lease. [Sec. 9.14]
- G. Attorney’s Fee’s - In the event that there is an Event of Default or that it shall become necessary for the City to employ attorneys or to incur other expenses to collect Basic Rent, Additional Payments or other amounts payable, or to enforce observance or performance of any covenant, agreement or other obligation on the part of LHA, under the Lease, **LHA, on demand therefor, shall reimburse the reasonable fees and expenses of those attorneys,** to the extent permitted by law, and will reimburse the other reasonable expenses so incurred. [Sec. 13.5; also see Sec. 3.2(b)(iii) above]
- H. **Open Meetings** - The meetings of the Trustees of LHA shall, be open to the public to assure full disclosure of the operations of the Hospital unless the Trustees determine that public discussion or action by the Trustees would be detrimental to the interests of the patients of the Hospital or the welfare of the residents of the City or the Hospital. [Recitals, pg. 2] At all times throughout the Lease Term,

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT
4.21.2015**

LHA covenants that it shall... open to the public all meetings of its Trustees to assure full disclosure of the operations of LHA **except when the Trustees by motion adopted by them determine that public discussion or action of the Trustees would be detrimental to the interests of the patients of LHA, the welfare of the residents of the City or LHA.** [Sec. 9.11(c)]

II. Definitive Agreement by and between the Cleveland Clinic Foundation (“CCF”) and LHA dated as of _____, 1996 (the “Definitive Agreement”)

A. Primary CCF Rights

1. CCF becomes the Sole Member of LHA and, as the Sole Member, has the right to approve the following actions taken by LHA:
 - a. Any management contract, lease or similar contract between LHA and any outside entity involving a significant portion of the assets or operations of LHA. [Sec. 1.1.1.3]
 - b. Any unbudgeted capital projects in excess of \$500,000 or such greater amount as CCF may from time to time specify in writing, or any project requiring a certificate of need. [Sec. 1.1.1.5]
 - c. LHA’s incurrence, assumption or guarantee of any indebtedness, capital expenditures, or disposal of assets, in excess of \$500,000 or such greater amount as CCF may from time to time specify in writing. [Sec. 1.1.1.6]
 - d. LHA’s annual operating and capital budgets. [Sec. 1.1.1.7]
 - e. LHA’s strategic and financial plans, including the implementation of new or elimination of existing services offered at the Hospital. For purposes of Section 1.1.1.9, the term "services" includes the types of services available at the Hospital at the closing of the Definitive Agreement, including, but not limited to Obstetrics/Gynecology, Pediatrics, Emergency Medicine Services, Pathology, Medicine and Surgery. The term "services" does not include the magnitude or level of service, such as hours of service, or the manner (including changes in technology) by which the types of services are provided; provided, however, that the change in magnitude or levels of services does not, as a practical matter result in the significant reduction in such service so as to be an effective elimination of such service. [Sec. 1.1.1.9] _____

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT
4.21.2015**

- 2. Seats on LHA Board – CCF has the right to elect three trustees to the LHA Board. [Sec. 1.1.3.3]
- 3. Day-to-Day Operations - If cash generation from LHA operations and investments averages less than \$3 million per year in any consecutive (i.e., rolling) three year time period (the "Period of Deficiency"), as reported in the audited financial statement entitled "Statements of Cash Flows", or CCF is required to advance funds which total in the aggregate \$30 million or more to meet any requirement in the Definitive Agreement, CCF shall have the right to assume the management of the day to day operations of the Hospital. [Sec. 2.1.3]

B. Primary CCF Obligations

- 1. Exercise by CCF of its Approval Rights - All of the rights set forth in Section 1.1 of the Definitive Agreement shall be exercised by CCF in a fiscally prudent manner, consistent with LHA’s charitable purpose and LHA’s obligations under the Lease in order to preserve the operations of the Hospital as a going concern, as defined under generally accepted accounting principles. [Sec. 1.1.4]
- 2. Compliance with the Lease - CCF acknowledges and agrees that no provision of the Definitive Agreement will cause LHA to take or omit to take any action that could cause LHA to fail to perform or to observe, or otherwise be in default of, any of its obligations under the Lease. [Sec. 1.8.1] [REDACTED]
- 3. Debt-to-Cash Ratio: CCF shall assure that LHA shall have a cash to debt ratio of 1:1 on a fiscal year basis. Such ratio shall be determined based on the annual audited financial statement of LHA. [Sec. 2.1.1] Cash which may be set aside for capital expenditures pursuant to Sec. 2.1.2, unless and until actually spent shall be included in determining whether the requirements set forth in Section 2.1.1 have been fulfilled or whether CCF is required to advance funds to permit LHA to meet the ratio. [Sec. 2.1.2]
- 4. Funds for Development/Improvement of Programs – CCF shall provide LHA with funds (without any obligation to repay) in an aggregate amount of \$10 million to assist Lakewood in the development or improvements of some or all of the programs and facilities listed on Exhibit 2.1.4A of the Definitive Agreement; provided, however, 75% of such expenditures shall be made for programs or facilities located within the City. Such funds shall be committed and provided over a 5-year period from the date of closing. [Sec. 2.1.4]

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT
4.21.2015**

5. Cleveland Health Network - CCF and its Affiliates shall use best efforts to permit LHA to become a member of the Cleveland Health Network as of the execution of the Definitive Agreement and to maintain LHA as a member of the Cleveland Health Network during the term of the Definitive Agreement. [Sec. 1.6]
6. Admitting Privileges - CCF shall use its best efforts to ensure that its affiliated and employed physicians who practice in the Lakewood Service Area, including the CCF Westlake satellite, shall maintain admitting privileges at LHA, subject to the staff privileges requirements adopted by LHA as applied to any particular physician. [Sec. 2.1.5]
7. Specialty Services - Upon request by LHA, CCF shall work together with LHA to establish the joint operation of specialty services at the Hospital, all of which specialty service modification shall be consistent with the overall strategic plan and budget which shall be as established by CCF. [Sec. 2.1.6]
8. Other Obligations – Upon request by LHA, CCF and LHA shall work together to (i) establish and operate medical educational programs with the Hospital as a residency rotation site [Sec. 2.1.7]; and (ii) establish programs to improve administrative efficiency and cost reduction and other clinical/administrative services to which the parties agree [Sec. 2.1.8].

C. Primary LHA Obligations

1. Capital Expenditures - Capital expenditures by LHA (which are anticipated to be provided from LHA's cash generation and net liquid assets), within the Lakewood Service Area, will average \$5 million per year over a rolling ten year period for the investment in or replacement of physical plant, the acquisition of equipment, and the implementation of new programs; provided, however, that at least an average of \$3 million is expended annually over a rolling three year period. Of the average \$5 million per year over a rolling ten year period and of the average \$3 million per year over a rolling three year period, at least seventy-five percent (75%) of such average minimum capital expenditures shall be made in the City. All capital expenditures in excess of \$500,000 for a particular item shall require a business plan approved by CCF. [Sec. 2.1.2]

D. Termination Rights

1. Mutual consent of the parties. [Sec. 10.2]
2. CCF sells all or substantially all of its assets to a for profit corporation, LHA has the right to terminate. [Sec. 10.2.1]

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT
4.21.2015**

- 3. If the Lease expires or terminates, after CCF has had a reasonable opportunity to cure any default. [Sec. 10.2.2]

- E. Third Party Beneficiaries – Except as specifically provided in the Definitive Agreement, the Definitive Agreement does not and is not intended to create any rights in any person or entity which is not a party to the Definitive Agreement. [Sec. 12.15]

- F. Resolution of Disputes [Sec. 11.1]
 - 1. The party alleging a dispute must give written notice to the other party and such party has 30 days to resolve the dispute.

 - 2. If not resolved, the parties can request that the matter be submitted for discussion and resolution, if possible by the CEOs of CCF and LHA or to a committee comprised of the CEOs of CCF and LHA, the Mayor of the City and a member of the LHA Board of Trustees selected in accordance with Sec. 1.1.3.3 and 2 Trustees selected in accordance with Sec. 1.1.3.5.

 - 3. If not resolved informally, disputes shall be submitted for binding arbitration, except for any dispute where the remedy or relief sought includes the payment of money.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]