

FIRST AMENDMENT TO AMENDED AND RESTATED LEASE

THIS FIRST AMENDMENT TO AMENDED AND RESTATED LEASE (this “First Amendment”) is entered into as of December 21, 2015 by and between **CITY OF LAKEWOOD, OHIO**, a municipal corporation and political subdivision in and of the State of Ohio (the “City”) and **LAKEWOOD HOSPITAL ASSOCIATION**, an Ohio nonprofit corporation (“Lessee”).

RECITALS

- A. The City and Lessee entered into that certain Amended and Restated Lease dated as of December 23, 1996 and recorded in Volume 97-02063, Page 16 of the Cuyahoga County, Ohio real property records (the “Lease”), pursuant to which the City leased to Lessee, and Lessee leased from the City certain real and personal property for the operation of the Hospital.
- B. The City and Lessee are parties to that certain Master Agreement dated as of December 21, 2015 (the “Master Agreement”) by and among the City, Lessee and the Cleveland Clinic Foundation, an Ohio nonprofit corporation (“CCF”).
- C. As provided in the Master Agreement, the City, Lessee and CCF have agreed to permit the cessation of inpatient hospital operations and all other operations at the Hospital (the “Closure”) pursuant to the terms of the Master Agreement.
- D. The City and Lessee wish to amend certain provisions of the Lease as provided by the Master Agreement.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. Defined Terms. Unless specifically defined herein, all capitalized terms used in this First Amendment shall have the meaning assigned to them in the Lease.
2. Statement of Intent. The Statement of Intent set forth on pages 1-3 of the Lease are hereby deleted in their entirety.
3. Definitions. Section 1.2 of the Lease is hereby amended as follows:
 - a. The definition of “Leased Real Premises” set forth in the Lease shall be deleted in its entirety and replaced with the following:

“Leased Real Premises” means the City’s real property interest in the FHC Site and in the Current Hospital Site, each as defined in the Master Agreement.
 - b. The definition of “Termination Date” set forth in the Lease shall be deleted in its entirety and replaced with the following:

“Termination Date” means the earlier of (i) the date that is thirty (30) days after the FHC Commencement Date (as defined in the Master Agreement) and (ii) October 31, 2018; provided, however, if the FHC Commencement Date has not occurred by October 31, 2018, notwithstanding the good faith efforts by CCF to open the FHC, the Termination Date may be extended in additional three (3)-month increments by providing not less than thirty (30) days’ notice to the City, but in no event shall the Termination Date be later than June 30, 2019.

c. The following definitions shall be inserted:

“Emergency Department Services” means the operation of an emergency department on a 24 hours a day, 7 days a week, 365 days a year basis on the Leased Premises substantially similar to the emergency department being operated at the Leased Premises as of the date of the First Amendment.

“First Amendment” means that certain First Amendment to Amended and Restated Lease dated as of December 21, 2015 by and between the City and Lessee.

“Master Agreement” means that certain Master Agreement dated as of December 21, 2015, by and among the City, Lessee and CCF.

4. Extension of Lease. Section 2.5 of the Lease is hereby deleted in its entirety and replaced with the following: “Intentionally deleted.”

5. Base Rent. Section 3.1 of the Lease is hereby deleted in its entirety and replaced with the following: “Intentionally deleted.”

6. Additional Payments. Notwithstanding anything in the Lease to the contrary, Lessee shall, from and after the date hereof, make Additional Payments under the Lease in the amounts and on the dates set forth on Schedule 1 attached hereto (it being understood that, notwithstanding anything to the contrary contained in Section 3.2 or elsewhere in the Lease, Lessee’s obligation to pay the Additional Payments shall not exceed \$2,887,500.00, regardless of the ultimate Termination Date).

7. Personal Property. Notwithstanding anything to the contrary contained in Section 4.4 or elsewhere in the Lease, Lessee shall not be required to obtain, maintain or replace worn out or obsolete movable furnishings, equipment or other personal property.

8. Maintenance. Notwithstanding anything to the contrary contained in Section 6.1 or elsewhere in the Lease, Lessee’s obligation to maintain and repair the Leased Premises shall be limited to maintenance that is required (a) to keep the Leased Premises in suitable condition to provide the Emergency Department Services and any other services being provided by Lessee at the Leased Premises and (b) to keep the remainder of the Leased Premises in “mothballed” condition, which shall mean preserving the structural stability of the building, exterminating or controlling pests, protecting the exterior from moisture penetration (which shall include repairing

roof leaks but not requiring complete replacement of any roofing system), securing the building to prevent vandalism and break-ins, providing adequate ventilation to the interior, securing and preserving all utilities and mechanical systems (which shall include ordinary and regular maintenance but not capital replacements).

9. Release of Property. The FHC Site (as defined in the Master Agreement) is hereby released from the provisions of the Lease and, accordingly, removed from the definition of Leased Premises, effective on the closing of the FHC Site Sale Agreement (as defined in the Master Agreement), which closing shall be evidenced by the recording of a deed executed by the City conveying the FHC Site. The parties shall record a written release of the FHC Site on the closing of the FHC Site Sale Agreement.

10. Charitable Hospital Purpose. Section 9.2(c) of the Lease is hereby deleted in its entirety and replaced with the following: “Intentionally deleted.”

11. Community Advisory Committee. Section 9.2(i) of the Lease is hereby deleted in its entirety and replaced with the following: “Intentionally deleted.”

12. Governing Agreements and Composition of Governing Board. Section 9.2(j) of the Lease is hereby deleted in its entirety and replaced with the following: “Intentionally deleted.”

13. Operation of the Leased Premises. In furtherance of the Closure, Lessee shall not be required to fulfill any of the covenants set forth in Section 2.2 and in Section 9.11(a), (b), (d) and (e) of the Lease; provided, however, that Lessee shall, as it relates to or is necessary to provide the Emergency Department Services and any other services Lessee, in its sole discretion, elects to provide at the Leased Premises comply with the covenants set forth in Section 9.11(a) and (b).

14. Required Services/Emergency Department Services. Lessee shall provide the Emergency Department Services at the Leased Premises and shall not be required to provide any of the Required Services, as defined in the Lease. In furtherance thereof, Section 9.16 of the Lease is hereby deleted in its entirety and replaced with the following: “Intentionally deleted.”

15. Assignment and Subleasing. Section 11.1 of the Lease is hereby deleted in its entirety and replaced with the following:

Section 11.1. Subleasing, Assignment and Right to Use. Lessee may not assign this Lease or sublet the Leased Premises without the written permission of the City, which will not be unreasonably withheld, conditioned or delayed. Notwithstanding anything to the contrary in this Section 11.1, Lessee shall be permitted to enter into (i) short-term subleases with current tenants of the FHC Site (as defined in the Master Agreement) without the City’s consent in order to facilitate the redevelopment of the FHC Site (including, without limitation, granting licenses to CCF with respect to the emergency department parking lot for purposes consistent with the development of the FHC) and (ii) subleases with third-parties for portions of the FHC Site, provided that, in each case, such subleases terminate on or before the Termination Date.

16. Termination of and Substitution for Lease. Article XII of the Lease is hereby deleted in its entirety and replaced with the following: “Intentionally deleted.”

17. Remedies, Etc. Section 13.2, 13.3, 13.4, 13.5, 13.6, 13.7, 13.8, 13.9, 13.10 and 13.11 are hereby deleted in their entirety and replaced with the following: “Intentionally deleted.” The terms of Article X of the Master Agreement shall apply to any dispute arising under the Lease.

18. Surrender of Leased Premises. Section 14.1 of the Lease is hereby deleted in its entirety and replaced with the following:

Section 14.1. Surrender of Leased Premises. On the Termination Date or earlier termination of this Lease, the Lessee covenants and agrees to surrender the Leased Premises to the City peaceably and promptly, together with all appurtenances thereto, in the condition required by Section 8 of the First Amendment. For the avoidance of doubt, Lessee shall not be required to surrender to Lessor any movable equipment, furnishings or other personal property in or on the Leased Premises and Lessee shall have removed all such items from the Leased Premises, as its sole cost and expense, on or before the Termination Date and repaired any damage caused by such removal.

19. Definitive Agreement and Indenture Obligations. Sections 14.13, 14.15 and 14.16 of the Lease each are hereby deleted in their entirety and each replaced with the following: “Intentionally deleted.”

20. Disposition of Assets. Notwithstanding anything to the contrary contained in the Lease, Lessee (a) shall be permitted to transfer its assets to CCF upon its dissolution in accordance with the terms and conditions of the Master Agreement, (b) shall be permitted to transfer all movable equipment, furnishings and other personal property to CCF upon the termination of the Lease, and (c) shall not be required to return any movable equipment, furnishings, other personal property and Intangible Assets to the City on the Termination Date.

21. Indemnification. Notwithstanding anything contained herein to the contrary, the City and Lessee agree that Section 9.9 of the Lease shall remain in full force and effect through the pendency of the suit styled *Edward Graham, et al. v. City of Lakewood, et al.* pending in the Cuyahoga County Court of Common Pleas, Case No. CV-15-846212, any appeals concerning the same, and any other litigation which may arise as a result of this First Amendment and/or the Closure, including closing of the Hospital and the cessation of services or programs at the Hospital.

22. Termination of Lease. On or about the Termination Date, the parties shall execute and record with the Cuyahoga County, Ohio Recorder, a written termination and release of this Lease.

23. Successors and Assigns. This First Amendment shall be binding upon and shall inure to the benefit of the successors and assigns of the parties.

24. Conflicts. In the event of a conflict between the provisions of this First Amendment and the provisions of the Lease, the provisions of this First Amendment shall control. In the event of a conflict between the provisions of the Lease, as herein amended and modified, and the Master Agreement, the provisions of the Master Agreement shall control.

25. Ratification. Except as expressly amended or modified herein, all of the terms, covenants and conditions of the Lease, including and incorporating those as amended herein, shall remain unchanged and in full force and effect; and the Lease, as herein amended and modified, is hereby ratified and confirmed.

26. No Third Party Beneficiaries. This First Amendment is intended solely for the benefit of the parties hereto and not for the benefit of any other person or entity.

27. Counterparts. This First Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the day and year first above written.

THE CITY:

CITY OF LAKEWOOD, OHIO, a municipal corporation and political subdivision in and of the State of Ohio

By: 
Michael P. Summers, Mayor

LESSEE:

LAKEWOOD HOSPITAL ASSOCIATION, an Ohio nonprofit corporation

By: _____
Name: _____
Title: _____

The legal form and correctness of this instrument is hereby approved:

By: 
Kevin M. Butler, Director of Law

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the day and year first above written.

THE CITY:

CITY OF LAKEWOOD, OHIO, a municipal corporation and political subdivision in and of the State of Ohio

By: _____
Michael P. Summers, Mayor

LESSEE:

LAKEWOOD HOSPITAL ASSOCIATION, an Ohio nonprofit corporation

By: Thomas J. Gable
Name: THOMAS J. GABLE
Title: CHAIRMAN, BOARD OF TRUSTEES

The legal form and correctness of this instrument is hereby approved:

By: _____
Kevin M. Butler, Director of Law

STATE OF OHIO)
) SS:
COUNTY OF Cuyahoga)

The foregoing instrument was acknowledged before me this 21st day of December, 2015, by Michael P. Summers, the Mayor of **CITY OF LAKEWOOD, OHIO**, a municipal corporation and political subdivision in and of the State of Ohio, on behalf of the municipal corporation.



Notary Public

**KEVIN M. BUTLER, ATTORNEY
NOTARY PUBLIC • STATE OF OHIO
My commission has no expiration date
Section 147.03 O.R.C.**

STATE OF _____)
) SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by _____, the _____ of **LAKEWOOD HOSPITAL ASSOCIATION**, an Ohio nonprofit corporation, on behalf of the non profit corporation.

Notary Public

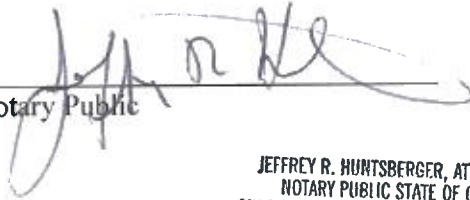
STATE OF OHIO)
) SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Michael P. Summers, the Mayor of **CITY OF LAKEWOOD, OHIO**, a municipal corporation and political subdivision in and of the State of Ohio, on behalf of the municipal corporation.

Notary Public

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

The foregoing instrument was acknowledged before me this 21 day of December, 2015, by Thomas J. Goble, the Chairman of **LAKEWOOD HOSPITAL ASSOCIATION**, an Ohio nonprofit corporation, on behalf of the non profit corporation.



Notary Public

JEFFREY R. HUNTSBERGER, ATTORNEY
NOTARY PUBLIC STATE OF OHIO
MY COMMISSION HAS NO EXPIRATION DATE
SECTION 147.03 R.C.

Schedule 1

Additional Payments

DATE		AMOUNT
MARCH 31, 2016		383,333.33
JUNE 30, 2016		383,333.33
SEPTEMBER 30, 2016		383,333.34
MARCH 31, 2017		383,333.33
JUNE 30, 2017		383,333.33
SEPTEMBER 30, 2017		383,333.34
JANUARY 31, 2018		130,555.89
FEBRUARY 28, 2018		130,555.89
MARCH 31, 2018		130,555.89
APRIL 30, 2018		65,277.44
MAY 31, 2018		65,277.44
JUNE 30, 2018		65,277.45
Total		2,887,500.00