

MEMORANDUM

TO: MAYOR AND CITY COMMISSION
FROM: CITY ATTORNEY'S OFFICE
DATE: March 1, 2021
**RE: Ninth Amendment to Lease and Transfer Agreement
Between the City of Lakeland and Lakeland Regional
Medical Center**

Attached for your consideration is a proposed Ninth Amendment to the Lease and Transfer Agreement between the City of Lakeland and Lakeland Regional Medical Center, Inc. (LRMC) pertaining to the lease of the Hospital to LRMC. The proposed Ninth Amendment provides for the prepayment to the City of the total sum of Two Hundred Fifteen Million and No/100 Dollars (\$215,000,000.00) on or before October 1, 2021 in full satisfaction of all rent and other payments owed by LRMC to the City for Fiscal Years 2021-22 through 2039-40 under the current Lease and Transfer Agreement. The proposed Ninth Amendment also provides for the extension of the Lease and Transfer Agreement in perpetuity subsequent to Fiscal Year 2039-40 for Ten Dollars (\$10.00) per year.

As background, the existing Lease and Transfer Agreement between the City and LRMC is scheduled to expire on September 30, 2040. The City currently utilizes payments under the Lease to fund capital, maintenance and repairs costs within the City's Public Improvement Fund. The existing Lease provides that the parties will enter into good faith lease negotiations beginning October 1, 2036 for a twenty-five (25) year extension of the Lease and specifies that any rent and other payments under a lease extension "shall be consistent with payments then being made by other acute care not for profit hospitals in Florida which lease their facilities from governmental entities such as counties, municipalities and hospital districts." The Lease further provides that LRMC shall have an option to purchase the Hospital either in the event the City notifies LRMC during the lease negotiation period of its desire to sell the Hospital to LRMC, or in the alternative, if the parties are unable to reach agreement on the terms of a lease extension. In the event of a sale, the purchase price for the Hospital would be determined by a nationally-recognized health care appraisal firm agreed to by the City and LRMC. LRMC would be entitled to a credit against the purchase price in the aggregate amount of all rent and other payments made to the City by LRMC from the inception of the Lease on October 1, 1986 through September 30, 2040. The existing Lease finally provides that, in the event the parties are unable to agree on the terms and conditions of either a lease extension or a sale of the Hospital to LRMC, then the Lease will expire on September 30, 2040 and the City would be free to sell or lease the Hospital to a third party or operate the Hospital itself.

Complicating this picture is Section 155.40, Florida Statutes, which provides that, upon the sale or lease of a municipal hospital, fifty percent (50%) of the net proceeds of

the sale or lease shall be deposited into a health care economic development trust fund “to promote job creation in the health care sector of the economy through new or expanded health care business development, new or expanded health care services, or new or expanded health care education programs or commercialization of health care research within the affected community,” and fifty percent (50%) of the net proceeds shall be appropriated for funding the delivery of indigent care. Importantly, however, the statute contains an exception to the above restrictions for existing municipal hospital leases, such as the City’s lease with LRMC, so long as those leases remain in effect or are modified, extended or renewed. The practical effect of this statutory scheme is that, barring legislative changes to the governing statute, a sale or lease of the Hospital to a third party other than LRMC in 2040 would result in the net proceeds of the sale or lease being restricted to the above health-related purposes, while an extension of the existing Lease with LRMC would remain exempt from the statute.

Given the favorable interest rates prevailing in the current economic climate, the City and LRMC have been engaged in discussions over the last several months of a possible full prepayment under the Lease and Transfer Agreement that would both relieve LRMC of ongoing payments under the Lease and provide the City with certainty in the face of the above contractual and statutory restrictions. The City Manager and Finance Director have engaged in an extensive analysis of the City’s Public Improvement Fund and have concluded that, assuming a 6% rate of return on LRMC’s prepayment, with no drawdowns of the principal, and growth in Public Improvement Fund costs of no greater than 1.75% per year subsequent to Fiscal Year 2029/30, a prepayment in the amount of \$215,000,000 will enable the City to continue to fund projected capital, maintenance and repair needs within the Public Improvement Fund for the foreseeable future, with some programmed capital expenditures being significantly reduced or removed to balance with this prepayment amount. Additionally, should these assumptions not be met, and absent other mitigating options, a shortfall in the transfer from the Public Improvement Fund to the General Fund could occur, resulting in reduced General Fund revenue. LRMC has agreed to a prepayment in this amount in full satisfaction of all payments otherwise due and owing under the Lease Agreement for the time period beginning Fiscal Year 2021/22 and continuing through Fiscal Year 2039/40. Under the attached Ninth Amendment, LRMC will make payment to the City in the amount of \$215,000,000.00 on or before October 1, 2021. Thereafter, LRMC will lease the Hospital from the City on a perpetual basis for Ten Dollars (\$10.00) per year. The City will retain the right under the Ninth Amendment to terminate the Lease in the event of a default by LRMC under the Lease, which would include bankruptcy or abandonment of the Hospital by LRMC, or a failure to continue to provide indigent care services.

It is recommended that the City Commission approve the attached Ninth Amendment to the Lease and Transfer Agreement between the City of Lakeland and Lakeland Regional Medical Center, Inc. and authorize the Mayor and other appropriate City officials to execute all instruments necessary to finalize the transaction.

Attachment

**NINTH AMENDMENT TO LEASE AND TRANSFER
AGREEMENT BETWEEN THE CITY OF LAKELAND, FLORIDA
AND LAKELAND REGIONAL MEDICAL CENTER, INC.**

THIS NINTH AMENDMENT TO THE LEASE AND TRANSFER AGREEMENT (the "Ninth Amendment") is entered into effective March ____, 2021, by and between **THE CITY OF LAKELAND, FLORIDA**, ("City") a Florida municipal corporation, and **LAKELAND REGIONAL MEDICAL CENTER, INC.**, ("LRMC") a Florida not for profit corporation and **LAKELAND REGIONAL HEALTH SYSTEMS, INC.** ("LRHS"), a Florida not for profit corporation.

WHEREAS, the City of Lakeland, Florida, a municipal corporation organized and in good standing under the laws of the State of Florida, acting by and through its City Commission, and Lakeland Regional Medical Center, Inc., a not-for-profit corporation organized, existing and in good standing under the laws of the State of Florida, acting by and through its Board of Directors, has previously entered into a Lease and Transfer Agreement dated as of October 1, 1986, recorded in Official Records Book 2460, Pages 1763-1883, Public Records of Polk County, Florida; and

WHEREAS, the CITY and LRMC entered into a First Amendment to Lease and Transfer Agreement dated May 9, 2002, and recorded in Official Records Book 5009, Page 610, Public Records of Polk County, Florida (the "First Amendment"); and

WHEREAS, the City and LRMC entered into a Second Amendment to Lease and Transfer Agreement dated October 1, 2011, and recorded in Official Records Book 8495, Pages 1568-1574, Public Records of Polk County, Florida; (the "Second Amendment"); and

WHEREAS, the City and LRMC entered into a Third Amendment to Lease and Transfer Agreement dated December 5, 2011 and recorded in Official Records Book 8539, Pages 435-437, Public Records of Polk County Florida; (the "Third Amendment"); and

WHEREAS, the City and LRMC entered into an unrecorded Fourth Amendment to Lease and Transfer Agreement dated November 5, 2012; (the "Fourth Amendment"); and

WHEREAS, the City and LRMC entered into a Fifth Amendment to Lease and Transfer Agreement dated October 27, 2014, and recorded in Official Records Book 9373, Pages 1401-1404, Public Records of Polk County, Florida (the “Fifth Amendment”); and

WHEREAS, the City and LRMC entered into a Sixth Amendment to Lease and Transfer Agreement dated August 6, 2015, to be effective September 30, 2015, and recorded in Official Records Book 9601, Pages 785-792 (the “Sixth Amendment”); and

WHEREAS, the Sixth Amendment, among other things, deleted the Fifth Amendment in its entirety; and

WHEREAS, the City and LRMC entered into a Seventh Amendment to Lease and Transfer Agreement with an effective date of October 1, 2017, and which was recorded in Official Records Book 10272, Pages 58-90, Public Records of Polk County, Florida (the “Seventh Amendment”); and

WHEREAS, the City and LRMC entered into an Eighth Amendment to Lease and Transfer Agreement with an effective date of August 5, 2019, and which was recorded in Official Records Book 10945, Pages 393-396, Public Records of Polk County, Florida (the “Eighth Amendment”); and

WHEREAS, the Lease and Transfer Agreement, as amended by the First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Amendments, shall be referred to hereinafter as the “Lease and Transfer Agreement”; and

WHEREAS, the City and LRMC wish to amend the Lease and Transfer Agreement as set forth herein;

NOW THEREFORE, the City of Lakeland, Florida, acting through its City Commission, and Lakeland Regional Medical Center, Inc., acting through its Board of Directors, and Lakeland Regional Health Systems, Inc., acting through its Board of Directors, do hereby amend the Lease and Transfer Agreement as follows:

1. The above stipulations are true and correct and by this reference are incorporated herein.
2. Any capitalized terms used herein shall have the same meaning as set forth in the Lease and Transfer Agreement, unless otherwise specifically modified herein.
3. Amend Section 3.05 (a) of Article III of the Lease and Transfer Agreement to provide as follows:

(a) Rent. All rent due under the Lease and Transfer Agreement and all Additional Payments due under the Lease and Transfer Agreement for the Fiscal Year 2021-2022 through Fiscal Year 2039-2040 shall be prepaid in full by LRMC paying to the City the sum of Two Hundred Fifteen Million Dollars (\$215,000,000.00) (the "Prepaid Rent"), said payment to be made to the City on or before October 1, 2021. Thereafter, for Fiscal Years subsequent to 2039-2040, the total rent payments to the City shall be Ten Dollars (\$10.00) per Fiscal Year, in perpetuity. For the avoidance of doubt, all rent and all Additional Payments due under the Lease and Transfer Agreement for Fiscal Year 2020-2021 shall continue to be due and owing to the City notwithstanding this Ninth Amendment and notwithstanding the payment of the Prepaid Rent to the City.

4. Delete Sections 3.05 (b), (c), and (d), and Sections 3.06 and 3.07 of Article III of the Lease and Transfer Agreement, it being the intent of the Parties that all Additional Payments through Fiscal Year 2039-2040 have been prepaid and that thereafter there shall be no further Additional Payments due, only annual rent payments of Ten Dollars (\$10.00) per Fiscal Year, in perpetuity.

5. Delete Section 9.01.(a) of Article IX of the Lease and Transfer Agreement.

6. Amend Article I of the Lease and Transfer Agreement so that the definition of "Term of this Agreement" or the "term hereof" shall hereafter provide:

"Term of this Agreement" or the "term hereof" shall be a term in perpetuity and shall automatically renew on September 30th of each Fiscal Year.

7. Amend Article X, Section 10.22 of the Lease and Transfer Agreement so that said section shall hereafter provide:

SECTION 10.22. Termination. It is the specific intent of the Parties that this Lease and Transfer Agreement shall renew each year on September 30th, in perpetuity, unless terminated in accordance with a specific default provision set forth in Article IX, Section 9.01. (b-j) of the Agreement.

8. By this Ninth Amendment, the City specifically states and declares that it is the City's clear and explicit intent to extend the Lease and Transfer Agreement, as amended by this Ninth Amendment, in perpetuity under Florida law and to grant LRMC the right to perpetual one (1) year renewals. It is further LRMC's clear and explicit intent that, by the execution of this Ninth Amendment, the Lease and Transfer Agreement shall become a lease in perpetuity under Florida law. The City and LRMC, as a material inducement for entering into this Ninth Amendment, specifically agree that payment of the Prepaid Rent under this Ninth Amendment

constitutes only prepayment of all rent and Additional Payments due under the Lease and Transfer Agreement for the Fiscal Year 2021-2022 through Fiscal Year 2039-2040 and consideration for the extension of the Lease and Transfer Agreement in perpetuity, and does not constitute and shall not be construed as the proceeds from a sale of the Hospital or any of its assets, it being the explicit intention of the City and LRMC that this Ninth Amendment is only an extension of the existing Lease and Transfer Agreement between the parties and not a sale of the Hospital or any of its assets.

9. All provisions of the Lease and Transfer Agreement not inconsistent with this Ninth Amendment to the Lease and Transfer Agreement, are restated herein.

10. Notwithstanding any of the above, this Ninth Amendment is conditioned upon LRMC being able to obtain financing, at an interest rate and upon terms acceptable to LRMC, in the amount of Two Hundred Fifteen Million Dollars (\$215,000,000.00) in order to make the payment to the City set forth in paragraph 3 above.

IN WITNESS WHEREOF, the Parties hereto have caused this Ninth Amendment to the Lease and Transfer Agreement to be executed and delivered as of the first date written above.

**LAKELAND REGIONAL MEDICAL CENTER,
INC.,** a Florida corporation

By: Weymon Snuggs
Its: Chair of the Board of Directors

(CORPORATE SEAL)

Jonn Hoppe
Secretary to the Board

STATE OF FLORIDA
COUNTY OF POLK

The foregoing instrument is hereby acknowledged before me this ____ day of March, 2021, by Weymon Snuggs, the Chair of the Board of Directors of Lakeland Regional Medical Center, Inc. He is personally known to me and did take an oath.

(NOTARY SEAL)

NOTARY PUBLIC

My Commission Expires: _____

**LAKELAND REGIONAL HEALTH SYSTEMS,
INC.**, a Florida corporation

(CORPORATE SEAL)

By: Weymon Snuggs
Its: Chair of the Board of Directors

Jon Hoppe
Secretary to the Board

STATE OF FLORIDA
COUNTY OF POLK

The foregoing instrument is hereby acknowledged before me this ____ day of March, 2021, by Weymon Snuggs, the Chair of the Board of Directors of Lakeland Regional Health Systems, Inc. He is personally known to me and did take an oath.

(NOTARY SEAL)

NOTARY PUBLIC

My Commission Expires: _____

CITY OF LAKELAND, FLORIDA

ATTEST:

By: _____
Bill Mutz, Mayor

By: _____
Kelly S. Koos, City Clerk

Date: _____

(SEAL)

Approved as to form and correctness: _____
Palmer Davis, City Attorney