

Addendum

To the CITY OF MIDWEST CITY MEMORIAL HOSPITAL AUTHORITY AGENDA

October 25, 2016 - 7:02 PM

B. DISCUSSION ITEMS.

3. Discussion and consideration of 1) approving and entering into several agreements with Health Management Associates, Inc., Midwest Regional Medical Center, LLC and CHS/Community Health Systems, Inc., including a Settlement Agreement and Second Amendment to Lease, which will result in an Agreed Upon Dismissal with Prejudice of the suit filed by the Authority in the District Court of Oklahoma County, State of Oklahoma, upon the payment to the Authority of \$5,300,000 from Health Management Associates, Inc., Midwest Regional Medical Center, LLC and CHS/Community Health Systems, Inc.; and 2) authorizing the Chairman and/or General Manager/Administrator to approve and execute the necessary and appropriate documents to effect the Settlement and dismissal of the suit and any counterclaims. (General Manager/Administrator – G. Henson)



Midwest City Memorial Hospital Authority

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*General Manager/
Administrator*

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Pat Byrne
Rick Dawkins
Sean Reed
Christine Allen
Jeff Moore

Board of Grantors

Sherry Beard
John Cauffiel
Marcia Conner
Pam Dimski
Dara McGlamery
Joyce Jackson
Charles McDade
Nancy Rice
Sheila Rose

MEMORANDUM

TO: Honorable Chairman and Trustees

FROM: J. Guy Henson, General Manager/Administrator

DATE: October 25, 2016

SUBJECT: Discussion and consideration of 1) approving and entering into several agreements with Health Management Associates, Inc., Midwest Regional Medical Center, LLC and CHS/Community Health Systems, Inc., including a Settlement Agreement and Second Amendment to Lease, which will result in an Agreed Upon Dismissal with Prejudice of the suit filed by the Authority in the District Court of Oklahoma County, State of Oklahoma, upon the payment to the Authority of \$5,300,000 from Health Management Associates, Inc., Midwest Regional Medical Center, LLC and CHS/Community Health Systems, Inc.; and 2) authorizing the Chairman and/or General Manager/Administrator to approve and execute the necessary and appropriate documents to effect the Settlement and dismissal of the suit and any counterclaims.

Please see the attached documents. These documents accurately reflect the terms contained in the previous Term Sheet as discussed by the Authority. Staff recommends approval.

J. Guy Henson
General Manager/Administrator

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into effective the 3rd day of November 2016 (the “Effective Date”), by and among Midwest City Memorial Hospital Authority (“Plaintiff”), Health Management Associates, Inc. (“HMA”), CHS/Community Health Systems, Inc. (“CHS”), and Midwest Regional Memorial Hospital, L.L.C. (“MRMC”). (HMA, /CHS, and MRMC are sometimes referred to hereafter collectively as the “Defendants.”)

RECITALS:

WHEREAS, Plaintiff and Defendants are parties to that certain lawsuit styled *Midwest City Memorial Hospital Authority v. Health Management Associates, Inc. et al.*; Case No. CJ-2014-667 in the District Court of Oklahoma County, Oklahoma (the “Lawsuit”);

WHEREAS, the Lawsuit relates the performance of a certain lease which is evidenced by: (1) a Definitive Agreement dated May 21, 1996; (2) a Lease Agreement dated May 21, 1996 (“Lease Agreement”); and (3) a First Amendment to Lease and Lease Extension Agreement dated April 8, 2009 (“First Amendment”); and

WHEREAS, Plaintiff and Defendants agree to settle the Lawsuit upon the terms and conditions set forth below;

NOW, THEREFORE, for good and valuable consideration, in hand paid, the receipt and sufficiency of which is hereby acknowledged, Plaintiff and Defendants agree as follows:

1. Adoption of Recitals. The recitals are adopted as a material part of this Agreement and each party warrants to the others that the recitals are true and correct in all respects.
2. Closing. The closing of this Agreement shall occur no later than November 3, 2016.
3. Defendants’ Deliveries. At closing, Defendants shall deliver to Plaintiff the following:
 - 3.1. Funds. Good funds in the amount of Five Million Three Hundred Thousand Dollars (\$5,300,000.00);
 - 3.2. Lease Amendment. An executed original of a second amendment to lease in the form of the Second Amendment to Lease which is Schedule “1” hereto;
 - 3.3. Agreed Dismissal with Prejudice. A dismissal dismissing the Lawsuit with prejudice in the form of the Agreed Dismissal with Prejudice which is Schedule “2” hereto; and
 - 3.4. Settlement Agreement. An executed original of this Agreement.
4. Plaintiff’s Deliveries. At closing, Plaintiff shall deliver to Defendants the following:

- 4.1. Lease Amendment. An executed original of a second amendment to lease in the form of the Second Amendment to Lease which is Schedule “1” hereto;
 - 4.2. Agreed Dismissal with Prejudice. A dismissal dismissing the Lawsuit with prejudice in the form of the Agreed Dismissal with Prejudice which is Schedule “2” hereto; and
 - 4.3. Settlement Agreement. An executed original of this Agreement.
5. Miscellaneous. It is further agreed as follows:
- 5.1. Choice of Law. The validity, construction and enforcement of this Agreement shall be governed by the laws of the State of Oklahoma without giving effect to the principle of conflict of laws thereof.
 - 5.2. Prevailing Party. If any party institutes an action for the interpretation or enforcement of this Agreement, the unsuccessful party to such will reimburse the prevailing party for the reasonable costs and attorneys’ fees incurred by the prevailing party and related to such action.
 - 5.3. Voluntary Act. Each party represents and warrants to the other parties that they enter into this Agreement freely and voluntarily after consulting with legal counsel. The Plaintiff and Defendants are informed of their respective legal rights with respect to this Agreement.
 - 5.4. No Reliance; No Warranty. Each party specifically acknowledges and agrees that such party has read this Agreement and executed it without relying upon any statements, representations or warranties, written or oral, as to any law or fact made by any other party, not expressly set forth herein.
 - 5.5. Binding Effect. This Agreement will inure to the benefit of and bind the respective successors and permitted assigns of the parties hereto.
 - 5.6. Entire Agreement. This Agreement constitutes the full, final, and complete settlement of their differences and supersedes all other written or oral exchanges, arrangements, or negotiations between the Parties concerning the subject matter of this Agreement. The Parties further acknowledge and state that there are no representations, agreements, arrangements, or understandings, oral or written, concerning the subject matter of this Agreement that are not fully expressed and incorporated in this Agreement.
 - 5.7. Authority. Each party hereto represents, warrants, and agrees that such party has the requisite capacity or power and authority to enter into and perform the terms of this Agreement, that no further authority or approval is necessary and that such party has the capacity and full right and authority to fully commit and bind such party.

- 5.8. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original instrument. If the counterparts are separately signed, all of the counterparts taken together will constitute one agreement. This Agreement will not be binding until each party hereto has signed a counterpart of this Agreement and delivered such counterpart to the other parties hereto.
- 5.9. Severability. If one or more of the provisions of this Agreement shall be held invalid, illegal or unenforceable under the applicable law, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.
- 5.10. No Knowledge of Claims and Release. The parties represent to one another that they have no knowledge of any potential claims or causes of action against one another which are not asserted in the Lawsuit as of the effective date of this Agreement. Plaintiff and Defendants hereby release and forever discharge each other and their agents, servants, employees, directors, officers, affiliated entities and all other persons, corporations, firms, associations, or partnerships connected therewith, from all claims or causes of action of any kind asserted in the Lawsuit, or which could have been asserted in the Lawsuit based upon the Lease Agreement or the First Amendment thereto.

IN WITNESS WHEREOF, this Agreement has been executed by the parties effective the date first written above.

MIDWEST CITY MEMORIAL HOSPITAL
AUTHORITY, an Oklahoma public trust

By: _____
Name:
Title:

HEALTH MANAGEMENT ASSOCIATES, INC., a
Delaware corporation

By: _____
Name:
Title:

CHS/COMMUNITY HEALTH SYSTEMS, INC., a
Delaware corporation

By: _____

Name:

Title:

MIDWEST REGIONAL MEDICAL CENTER, L.L.C., an
Oklahoma limited liability company

By: _____

Name:

Title:

SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE (this “**Amendment**”) is made and entered into as of the 3rd day of November 2016 (the “**Effective Date**”) by and among **MIDWEST CITY MEMORIAL HOSPITAL AUTHORITY**, an Oklahoma public trust (“**Lessor**”), **MIDWEST REGIONAL MEDICAL CENTER, LLC**, an Oklahoma limited liability company (“**Lessee**”), the successor-in-interest to Midwest City HMA, Inc., **HEALTH MANAGEMENT ASSOCIATES, INC.**, a Delaware corporation (“**Guarantor**”) and CHS/Community Health Systems, Inc. (“**CHS/**”). Lessor, Lessee, Guarantor and CHS/ are sometimes referred to as a “**Party**” or collectively as the “**Parties.**”

RECITALS

WHEREAS, the **CITY OF MIDWEST CITY**, a municipal corporation (“**City**”), as lessor, and Lessor, as lessee, are parties to that certain Amended Lease Agreement dated October 8, 1963 which was amended by an Amendment to Lease dated June 12, 1984, further amended by another Amendment to Lease Agreement dated April 23, 1996, and further amended by another Amendment to Lease Agreement dated March 24, 2009 (collectively, the “**Prime Lease**”) wherein the City leased to Lessor the Midwest City Regional Hospital (n/k/a Midwest Regional Medical Center) and certain other interests in and property used in connection therewith, all as more particularly described in such Prime Lease; and

WHEREAS, Lessor and Lessee are the parties to and Guarantor is the guarantor of that certain Lease Agreement dated May 21, 1996 (the “**Original Lease**”), for certain “**Leased Assets**” (including the Midwest City Regional Hospital n/k/a Midwest Regional Medical Center), as defined in and all as more particularly described in such Original Lease; and

WHEREAS, Lessor and Lessee are the parties to and Guarantor is the guarantor of that certain First Amendment to Lease Agreement and Lease Extension Agreement dated April 8, 2009 (the “**First Amendment**”), for the “**Leased Assets**”;

WHEREAS, CHS/ has irrevocably and unconditionally assumed the performance and observation of the agreements and obligations of Lessee and Guarantor under the Amended Lease by virtue of that certain Assumption dated January 24, 2014, delivered by Acquiror to Lessor in connection with the merger of Guarantor and Acquiror consummated January 27, 2014; and

WHEREAS, notwithstanding the use of the terms Lease, Lessor and Lessee, it is understood that the Original Lease is actually a sublease, subject and subordinate to the terms of the Prime Lease, that Lessor herein is actually sublandlord herein and that Lessee herein is actually subtenant herein; and

WHEREAS, Lessor and Lessee desire to amend and modify the Original Lease and First Amendment on the terms and conditions hereinafter set forth and Guarantor and CHS/ are in agreement with this proposed Amendment;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, Lessor and Lessee agree as follows:

1. **RECITALS; DEFINED TERMS.** The foregoing recitals are hereby incorporated into the body of this Amendment as if such recitals were more specifically herein set forth. Capitalized terms used herein and not otherwise defined shall have the meanings respectively ascribed to such terms in the Original Lease and First Amendment. The Original Lease as amended by the First Amendment and this Amendment is hereinafter called the “**Amended Lease.**”

2. **AMENDMENT OF THE AMENDED LEASE.**

(a) **MODIFICATION OF LEASE TERM ARTICLE.** Sections 3.1(a) and 3.1(b) of Article 3 of the Amended Lease are hereby deleted and replaced in their entirety with the following new Sections 3.1(a) and 3.1(b):

SECTION 3.1(a) FIRST EXTENSION OF LEASE TERM. Subject to the terms and conditions of the Original Lease, the Lease Term commenced on June 1, 1996 and was to have expired on May 31, 2026. As amended by the First Amendment, the initial Lease Term was extended to expire at midnight on the last day of the month in which the Loan Amortization Period expires which is November 30, 2035 (the “**Extended Expiration Date**”). The period of time from June 1, 2026 to the Extended Expiration Date is called the “**Additional Lease Term,**” and the extended Lease Term (from June 1, 1996 through the Extended Expiration Date) is hereinafter called the “**Extended Lease Term.**”

SECTION 3.1(b) EXPIRATION OF INITIAL LOAN PERIOD. Between July 1 and November 1, 2019 (the end of the Initial Loan Period), Lessee will pay off the Loan. Lessee shall be entitled to use all or any portion of the remaining Security Deposit (as hereinafter defined) in paying off the Loan.

(b) **MODIFICATION OF RENT ARTICLE.** Section 4.1(b) of Article 4 of the Amended Lease entitled “Rent” is hereby deleted and replaced the following new Section 4.1(b):

SECTION 4.1(B) RENT FOR THE ADDITION. For the Additional Lease Term, Lessee shall pay rent as set forth herein for the Addition and the original Leased Assets. From the “**Addition Rent Commencement Date**” (defined as the date on which the first payment of Addition Rent is due hereunder from Lessee to Lessor) through and including the Extended Expiration Date, Lessee shall make prompt monthly payments to Lessor in an amount equal to each regularly scheduled debt service payment for the Loan that is next payable to Lender by Lessor pursuant to the Loan Documents; however, the amount payable by Lessee shall be recalculated assuming that the interest payable under the Loan Documents was based upon an interest rate 2% higher than the interest rate actually payable under the Loan Documents (the “**Addition Rent**”). The payments of Addition Rent shall be due from Lessee to Lessor ten (10) business days before the date on which the next scheduled debt service payment is due

pursuant to the terms of the Loan Documents, and Lessor shall provide Lessee with a schedule showing the amount of each such payment as soon as reasonably possible. After Lessee pays off the outstanding principal balance (and all accrued but unpaid interest, prepayment penalties, and other unpaid costs of the Loan), Lessee shall have no further obligation to pay any further Addition Rent to Lessor through and including the Extended Expiration Date.

(c) **MODIFICATIONS TO ARTICLE 5.** A new Section 5.11 shall be added and Section 5.11 renumbered as Section 5.12 in Article 5 entitled “Use and Control of Premises” as follows:

SECTION 5.11 CMS RATINGS.

(a) Lessee will cause the Hospital to achieve and maintain the following performance measures in the seven categories which comprise the star rating performance measures developed by the Centers for Medicare and Medicaid Services (“CMS”):

Category	Relation to National Avg.
Mortality	Same or Above
Safety of Care	Same or Above
Readmission	Same or Above
Patient Experience	Same or Above
Effectiveness of Care	Same or Above
Timeliness of Care	Same or Above
Efficient Use of Medical Imaging	Same or Above

(b) As of the date of this Amendment, the Hospital’s measures are below the national average with respect to the Safety of Care and Patient Experience measures. The Hospital shall not be in violation of this Section with regard to the Safety of Care and Patient Experience measures unless the Safety of Care or Patient Experience measures are below the national average in July 2020 or thereafter.

(c) The foregoing notwithstanding, there shall be no breach of covenant and no liquidated damages will be payable in any year in which the Hospital’s overall CMS Star rating meets or exceeds three (3) stars.

(d) Each year, Lessee will provide a written report to Lessor on progress for each category with a goal of improvement in each category and the Hospital's CEO will present such report in person at a meeting of Lessor’s Board no later than September 30 of each year. For any categories that are at “Below,” Lessee will present a specific, detailed plan for improvement of the score to Lessor.

- (e) Remedies for violation of this Section 5.11 shall be limited to those set forth in this Section 5.11. As liquidated damages for breach of the covenant, Lessee will pay to Lessor \$50,000 per year per category for any category in which the hospital scores “Below” the national average; provided, however, that liquidated damages shall not exceed \$200,000 in any year and liquidated damages will not be payable in connection with the Safety of Care or Patient Experience measures, if ever, until July 2021. If liquidated damages are due as provided above, such liquidated damages shall be paid by September 30 of each year applicable.
- (f) If CMS terminates its “Star” rating system at any time during the life of the Amended Lease, the parties, upon request of any party, will use best efforts to establish substitute performance measures which utilize national averages. If the parties are unable to agree to new performance measures within six (6) months of either party's request after such termination by CMS of the “Star” rating system, the matter will be settled by binding arbitration administered by the American Health Lawyers Association Alternative Dispute Resolution Service under its Rules of Procedure for Arbitration by the American Health Lawyers Association. There shall be one arbitrator. The place of arbitration shall be Oklahoma City, Oklahoma. Oklahoma law shall apply. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

(d) DELETION OF MAJOR EVENTS OF DEFAULT. Article 13 entitled “Lessee’s Default and Remedies Therefor” is hereby modified by deleting Section 13.1(d) and Section 13.1(e) in their entirety.

(e) FIRST REFUSAL. Section 16.2 of Article 16 entitled “Right of First Refusal” is hereby modified to require all parties to cooperate, act in good faith and in a commercially reasonable manner and to add ninety (90) days to each and every time period set forth in §16.2 thereof as follows:

ROFR Additional Days (from Offer Date)	
16.2(a) - Offer Date by Notice Before Consummation	Before
16.2(f) - Party Appraisals Due	105
16.2(f) - Report Majority Vote of 3 Appraisers	115
16.2(b) - Notice To Exercise & Deposit	120
16.2(e) - Due Diligence (no exercise)	120
16.2(e) - Due Diligence (exercise)	Closing
16.2(c) - First Refusal Agreement and Closing	150

Except as modified in this Amendment, Section 16.2 otherwise remains in full force and effect.

3. PUBLICITY. To the extent allowed by applicable law, the Parties will collaborate on the drafting of an appropriate public announcement of this Amendment and the

cotemporaneous Settlement Agreement among the Parties and the form, substance, timing and presentation of such announcement will be agreed to by the Parties prior to its issuance or release. Except as otherwise required by law, no Party will make any public disclosures with respect to this Amendment and the cotemporaneous Settlement Agreement among the Parties without the prior approval of the other Parties, unless compelled to do so to be in compliance with applicable law.

4. HEADINGS. The headings of the sections hereof are inserted for convenience only and in no way define, limit or prescribe the intent of this Amendment.

5. RATIFICATION. Except as modified by this Amendment, the Amended Lease and the Guaranty (as described in Article 16 of the Original Lease), and the Assumption shall remain otherwise unmodified and in full force and effect and the Parties hereby ratify and confirm the terms of such Amended Lease, the Guaranty, and the Assumption as modified by this Amendment.

6. CONFLICT. In the event of any conflict between the terms of the Amended Lease and the terms of this Amendment, the terms of this Amendment shall control.

7. AUTHORITY OF PARTIES. Each of the Parties hereby represent and warrant to the others: (a) that the execution and delivery of this Amendment has been fully authorized by all necessary corporate action; (b) that the person signing this Agreement has been fully authorized to do so and has the authority and power to bind the entity on whose behalf they have signed; and (c) to the best of their respective knowledge and belief, this Amendment is valid, binding and legally enforceable in accordance with its terms.

8. AMENDED MEMORANDUM OF LEASE. Lessor and Lessee agree to execute a shortform Amended Memorandum of Lease in recordable form which either Party may record in the Office of the Clerk of Oklahoma County, Oklahoma.

9. COUNTERPARTS. This Amendment may be executed in any number of identical counterparts, all of which, when taken together, shall constitute the same instrument.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Amendment to be executed by their duly authorized officers as of the date first written.

MIDWEST CITY MEMORIAL HOSPITAL
AUTHORITY, an Oklahoma public trust

By: _____

Name:

Title:

HEALTH MANAGEMENT ASSOCIATES, INC., a
Delaware corporation

By: _____

Name:

Title:

CHS/COMMUNITY HEALTH SYSTEMS, INC., a
Delaware corporation

By: _____

Name:

Title:

MIDWEST REGIONAL MEDICAL CENTER, L.L.C., an
Oklahoma limited liability company

By: _____

Name:

Title:

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA**

MIDWEST CITY MEMORIAL
HOSPITAL AUTHORITY,

Plaintiff,

v.

HEALTH MANAGEMENT
ASSOCIATES, INC.; MIDWEST
REGIONAL MEDICAL CENTER, L.L.C.;
and CHS/COMMUNITY HEALTH
SYSTEMS, INC.,

Defendants.

Case No. CJ-2014-667
Judge Roger Stuart

AGREED DISMISSAL WITH PREJUDICE

Plaintiff, by counsel, and Defendants, by counsel, hereby agree to the dismissal of this action in its entirety, including all claims and counterclaims, with prejudice with each party to bear its own costs and attorneys' fees.

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