

ORDINANCE 2008-10

AN ORDINANCE AMENDING THE LEASE OF REAL PROPERTY LOCATED IN TRACTS 20 AND 21 OF ORCHARD SUBDIVISION IN THE CITY OF FRUITA TO THE LOWER VALLEY HOSPITAL ASSOCIATION

WHEREAS, the Fruita City Council adopted Ordinance 2007-21 authorizing the Mayor to execute a Ground Lease between the City of Fruita and the Lower Valley Hospital Association for property located in Tracts 20 and 21 of Orchard Subdivision, in the City of Fruita, County of Mesa, State of Colorado, and

WHEREAS, the City of Fruita and the Lower Valley Hospital Association desire to amend the Ground Lease to clarify issues concerning Utility Services, Condemnation proceedings with respect to rent payments, and amend the rent payable upon expiration of the lease, and

WHEREAS, it is the intent of this ordinance to authorize the Mayor to execute the Amendment to the Ground Lease with the Lower Valley Hospital Association.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO, AS FOLLOWS:

Section 1: The Mayor is hereby authorized to execute Amendment #1 to Ground Lease with the Lower Valley Hospital Association attached hereto as Exhibit A.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL
ON THE 5th DAY OF AUGUST, 2008**

City of Fruita

H. Kenneth Henry, Mayor

ATTEST:

City Clerk

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EXHIBIT A

AMENDMENT #1 TO GROUND LEASE

WHEREAS, The City of Fruita and the Lower Valley Hospital Association (dba Family Health West) entered into a Ground Lease agreement on the 10th day of April 2008 for the lease of property owned by the City and located between Coulson and Cherry Street, and south of Ottley Avenue for the construction and operation of a hospital facility by the Lower Valley Hospital Association, and

WHEREAS, the parties to the agreement desire to amend the ground lease to clarify utility issues and rent payments due upon termination of the 99 year lease.

NOW, THEREFORE, THE PARTIES HEREBY AGREE TO AMEND THE GROUND LEASE BETWEEN THE CITY OF FRUITA, COLORADO AND THE LOWER VALLEY HOSPITAL ASSOCIATION DATED APRIL 10, 2008 AS FOLLOWS:

1. All of the terms and conditions of the original Ground Lease dated April 10, 2008 remain unchanged except for those terms and conditions modified by this Amendment #1. Both parties expressly understand that this Amendment #1 is incorporated into the original Ground Lease.
2. Section 4 (c) entitled Utilities and Services; Provision of Utility Services is hereby added to read as follows:

(c) Provision of Utility Services. Notwithstanding the foregoing, the Landlord, in its capacity as provider of certain utility services, shall be obligated to provide those utility services to the Property on the same basis that it would with respect to any property within the corporate limits of the Landlord not owned by it.

3. Section 11 (b) entitled Repair and Maintenance - Disclaimer; Landlord's Cure is hereby amended by the addition of the following sentence:

The provisions of this paragraph do not apply, however, to the Landlord in its capacity as provider of utility services pursuant to Section 4(d) hereof.

4. Section 12 (b) entitled Surrender; Holding Over – Holdover is hereby amended to read as follows:

(b) Holdover. If Tenant or anyone claiming under Tenant shall remain or continue to be in possession of the Property or any part thereof after the expiration of the Term or earlier termination of this Lease, without the express written agreement of Landlord, such holding over shall constitute a tenancy from month to month on the same terms and conditions herein specified so far as applicable, except that Rent payable for each month (or fraction of a month) of the holdover period shall be a negotiated rate between landlord and tenant.

5. Section 15 entitled Condemnation is hereby amended to read as follows:

(a) Total Taking. If the entire Property is taken for any public or quasi-public use, under any statute, by right of eminent domain or by purchase by public authority in lieu thereof, then this Lease will terminate as of the date upon which title or possession vests in the condemning authority (whichever occurs first), and all taxes, insurance premiums and other charges will be prorated and paid to the date of such termination and Tenant shall surrender the Property to Landlord, however, rent will not be prorated.

(b) Partial Taking. If a portion of the Property is taken for any public or quasi-public use, and Tenant reasonably determines that the remaining portion of the Property is unsuitable for the continued conduct of Tenant's business, Tenant may, at its option, terminate this Lease, by written notice to Landlord given within 30 days after the date upon which title or possession vests in the condemning authority (whichever occurs first). If Tenant does not timely elect to terminate this Lease, then it shall remain in full force and effect as to all portions of the Property not so taken. If Tenant terminates this Lease, all taxes, insurance premiums and other charges will be prorated as set forth in paragraph (a) above; however, Rent will not be prorated.

(c) Condemnation Award. In the event of any total or partial taking of the Property, Landlord shall be entitled to any and all payment, income, rent, award, or any interest therein whatsoever which may be paid or made in connection with such taking or conveyance, and Tenant shall have no claim against Landlord or otherwise for the value of any unexpired Term. Notwithstanding the foregoing sentence, Tenant shall have the right to claim for and prosecute a separate action to recover for loss of business, Tenant's personal property, moving cost or loss of goodwill and to receive any compensation specifically and separately awarded Tenant for such claim.

(d) Temporary Taking. If all or any portion of the Property is so taken for temporary use or occupancy, the foregoing provisions of this Section 15 shall be inapplicable to such taking. In such event, this Lease will continue in full force and effect and Tenant shall be entitled to make claim for, recover and retain, so long as it shall not be in default hereunder, any awards in the form of rent recoverable in respect to such taking, but only to the extent of such award that is attributable to the Term. If any award is made for a period that includes a portion of the Term and a period after the Term, the award shall be prorated between such two periods, based on the number of days in each such period, and Landlord shall be entitled to the portion of such award attributable to the period after the Term. In the event of any temporary taking, all options of Tenant to renew the Term that had not been previously properly exercised by Tenant shall

be null and void and of no further effect.

Notwithstanding the foregoing, the provisions of Section 15 are subject to Section 18.

Landlord and Tenant have duly executed this AMENDMENT #1 TO GROUND LEASE as of the _____ day of _____, 2008.

LANDLORD

CITY OF FRUITA, COLORADO, a home rule
City and political subdivision of the State of
Colorado

By: _____
H. Kenneth Henry, Mayor

TENANT

THE LOWER VALLEY HOSPITAL ASSOCIATION
d/b/a FAMILY HEALTH WEST, a Colorado
nonprofit corporation

By: _____
Dennis E. Ficklin, CEO/Secretary