

Agenda Item: NB-2

Meeting Date: 04/07/16

MEMORANDUM

TO: City Commission

THROUGH: Doug Hutchens, Interim City Manager 

DATE: March 28, 2016

FROM: Robert C. Ironsmith, Housing & Economic Development Director

SUBJECT: **BAYCARE HEALTH SYSTEM STANDARD PARKING LICENSE AGREEMENT** between the Trustees of Mease Hospital, Inc. d/b/a Mease Dunedin Hospital & the City Regarding Virginia Street/Mease Special Event Parking

PRESENTER: Robert C. Ironsmith, Housing & Economic Development Director

RECOMMENDATION: Approve the BayCare Health System Standard Parking License Agreement.

BUDGET IMPACT: None

PAST ACTION: None

NEXT ACTION: N/A

ATTACHMENTS: BayCare Health System Standard Parking License Agreement with Exhibit "A" depicting the special event parking area.

BACKGROUND: As a result of various special event parking areas disappearing downtown, such as the Gateway property, staff has been looking to secure other places that can be used for parking during the larger special events that occur downtown. One area that has come to staff's attention is a portion of a parking lot owned by Baycare Health System (Mease Hospital) off of Virginia Street. This area, which is shown as Exhibit "A" in the proposed License Agreement with BayCare Health System, could accommodate parking for 145 vehicles. BayCare, being community-minded, is graciously offering the parking area at no expense to the City. The City obligations would be to provide insurance and ensure the area, after use, is clean and safe and no cars remain overnight. In addition, the City shall notify BayCare at least fourteen (14) days prior to the first date of the event and BayCare will respond back to the City within seven (7) days for approval.

Staff recommends approval of the BayCare Health System Standard Parking License Agreement for special event parking for three (3) years with two renewal periods of one (1) year.

BAYCARE HEALTH SYSTEM
STANDARD PARKING LICENSE AGREEMENT

This BayCare Health System Standard Parking License Agreement ("**Agreement**") is made and entered into effective as of the date of last signature hereto ("**Effective Date**"), by and between Trustees of Mease Hospital, Inc. d/b/a Mease Dunedin Hospital ("**Owner**") and City of Dunedin ("**User**").

WITNESSETH:

1. **Summary.** The following is a summary of some of the terms of this Agreement. All references in this Agreement to the following terms shall be accorded the meanings or definitions given in this Section, as though such meaning or definition were fully set forth throughout the text hereof. This Section, together with the terms herein referenced, shall constitute an integral part of this Agreement.

1.1 **Owner's Name and Address:**

Trustees of Mease Hospital, Inc. d/b/a Mease
Dunedin Hospital

Make Checks Payable to:

Morton Plant Mease Health Care

Address to Send Checks:

Morton Plant Mease Health Care
P.O. Box 404761
Atlanta, GA 30384-4761

**Address to Send Correspondence and
Notices:**

BayCare Real Estate
East Lake Outpatient Center
3890 Tampa Road, Suite 405
Palm Harbor, FL 34684

With copy to:

BayCare Health System, Inc.
Attention: Legal Services Department
2985 Drew Street
Clearwater, Florida 33759

1.2 **User's Name and Address:**

City of Dunedin
Attention: Community Redevelopment
Agency Director
737 Loudon Avenue
Dunedin, Florida 34698

1.3 **Premises:**
Address:

Approximately 1.7 acres located in Pinellas
County, Florida, and being more particularly
shown and described on **Exhibit "A"** attached
to this Agreement

- 1.4 Term: Three (3) years during the Parking Time Periods (as hereinafter defined) with option to renew for two (2) renewals of one (1) year each.
- 1.5 Commencement Date: April 15, 2016
Expiration Date: April 14, 2019
- 1.6 License Fee: See Section 4 (Rent)
- 1.7 Parking Time Periods: See Section 2 (Premises; Parking Time Periods)
- 1.8 Security Deposit: None
- 1.9 Use: User may use the Premises during the Parking Time Periods (as hereinafter defined) for any municipal use, including, but not limited to, public parking, special events location for vendors or other persons participating in City of Dunedin events or functions, Downtown Dunedin Merchant's Association events and functions or for any other lawful municipal purpose.
- 1.10 Exhibits:
Exhibit
A Parking Lot Site Plan

AGREEMENT:

2. Premises; Parking Time Periods.

a. Owner hereby grants to User a license to use the premises as described in Section 1.3 ("Premises") during the Parking Time Periods (as hereinafter defined). In no event shall User or its agents, employees, contractors, agents, representatives, invitees, or guests utilize parking spaces: i) outside of the Premises; or ii) in the Premises beyond the Parking Time Periods. A site plan of the Premises is attached hereto as Exhibit A (Parking Lot Site Plan).

b. In the event that User desires to use the Premises under this Agreement, User shall make a request in writing ("**Parking Request**") to Owner at least fourteen (14) days prior to the first date of the intended use. A Parking Request shall include reasonable details regarding the use, including the dates and times. Within seven (7) days of Owner's receipt of a Parking Request, Owner shall approve or deny the Parking Request in its sole and absolute discretion. In the event that Owner does not approve or deny the Parking Request within such seven (7) day period, the Parking Request shall be deemed denied. If Owner approves the Parking Request, the dates and times set forth in the Parking Request shall be deemed the "**Parking Time Periods**" for purposes of this Agreement. The parties acknowledge and agree that a Parking Request and the approval and/or denial of a Parking Request may be completed by electronic mail. As of the Effective Date, Owner's representative for this Section 2(b) shall be Denise Loeffler (Denise.Loeffler@baycare.org) ("**Owner's Representative**"). Owner may amend the Owner's Representative at any time upon notice to User.

3. Term; Termination.

a. The term of this Agreement ("Term") shall be as stated in Section 1.4, beginning on the Commencement Date as defined in Section 1.5. Although the Term will commence on the Commencement Date, Owner and User shall be bound by the terms of this Agreement beginning on the Effective Date.

b. Notwithstanding anything contained herein to the contrary, at any time during the Term, Owner shall have the right to terminate this Agreement, without cause and without penalty, by delivering at least thirty (30) days advance written notice to User specifying the date on which this Agreement shall terminate. Upon such termination, neither party will have any further obligation, except: (i) for obligations incurred prior to the date of termination, and (ii) as provided for in provisions of this Agreement, which by their express or implied terms are intended to survive the termination or expiration of this Agreement, including, but not limited to, the indemnification and insurance provisions of this Agreement, User's obligation to deliver possession of the Premises and to restore the Premises in accordance with the terms and conditions of this Agreement, and User's responsibility to pay all amounts due under this Agreement through the date of termination.

4. License Fee. No license fee is required under this Agreement.

5. Security Deposit. No security deposit is required under this Agreement.

6. Construction.

a. Owner shall have no obligation to perform or cause the performance of construction of any improvements to the Premises, and shall not be obligated to reimburse User or provide an allowance for any costs related to construction of improvements therein.

b. During the Term, User, at its sole cost and expense, may re-surface the existing parking lot with the prior written consent of Owner.

7. Acceptance of Premises. User acknowledges that it has inspected the Premises and accepts same in its existing condition, subject to all defects, whether concealed or otherwise, and whether known or unknown to Owner, and does hereby release and discharge Owner from any and all damages of every kind that may be in any way occasioned thereby. Owner shall not be liable for any loss or damage caused by any defect on the Premises.

8. Liens. User shall not do any act which shall in any way encumber the title of Premises nor shall the interest or estate of Owner be in any way subject to any claim by way of lien or encumbrance, whether by operation of law by virtue of any express or implied contract by User, or by reason of any other act or omission of User. Any claim to, or lien upon, the Premises arising from any act or omission of User shall accrue only against the User interest of User and shall be subject and subordinate to the paramount title and rights of Owner in and to the Premises and the title and interest of Owner. Without limiting the generality of the foregoing, User shall not permit the Premises to become subject to any mechanics', laborers' or materialmen's lien on account of labor or material furnished to User or claimed to have been furnished to User in connection with work of any nature or character performed or claimed to have been performed on the Premises by, or at the direction or sufferance of User.

9. Maintenance; Removal of Cars. During the Parking Time Periods, User shall keep and maintain the Premises in a safe and sanitary condition. User shall clean and repair the Premises to the same condition provided to User immediately prior to its use of the Premises. Costs will be assessed to User for clean-up and restoration by Owner if User's clean-up and/or restoration is not satisfactory, as determined by Owner, in its sole and absolute discretion. All vehicles shall be removed from the Premises by the end of each Parking Time Period, failing which, Owner may immediately terminate this Agreement and/or remove the vehicles as provided by law without liability to User. All costs assessed by Owner under this Section shall be paid by User within fifteen (15) days of receipt of an invoice from Owner.

10. Use of Premises. User shall use the Premises during the Term of this Agreement only for the permitted use set forth in Section 1.9, and for no other purpose whatsoever. User shall not collect any rate or charge for the parking of a

motor vehicle on the Premises. User may place signage on the Premises to indicate its availability as public parking; provided, however, User shall remove all signage at the expiration of such specific use. User shall not make any use of the Premises which would: (1) represent an unlawful, improper, immoral, unethical or objectionable purpose; (2) constitute a nuisance, annoyance, inconvenience or danger; or (3) void or make unenforceable any insurance covering the Premises.

11. **General Conditions of Use.** User agrees that it, and its employees, contractors, agents, representatives, invitees, and guests shall comply with each of the following terms and conditions during use of Premises:

a. User, its employees, contractors, agents, representatives, invitees and/or guests are responsible for the proper use and care of any Owner property. User will be liable for the replacement cost of any Owner property which is damaged, destroyed, or lost.

b. During its use of the Premises, User shall abide by all applicable: i) federal, state, and local laws, rules and regulations, including, but not limited to, environmental laws ("Laws"), and ii) Owner's policies and procedures, including any modifications or additions thereto.

c. To the extent applicable, User must procure, at its own expense, all permits required in connection with its proposed use of the Premises.

d. User shall insure that its employees, contractors, agents, representatives, invitees, and guests comply with the terms of this Agreement.

e. User acknowledges and agrees that Owner shall not be responsible for providing any services, utilities, equipment or any other items to User for its use of the Premises.

f. User shall not make any alterations, additions and/or improvements to the Premises, except as specifically set forth herein.

g. User shall not conduct sales of any type on the Premises, including, but not limited to, food, merchandise, and services.

h. User agrees that there will be no pyrotechnics, or other dangerous or hazardous activities undertaken in or about the Premises.

i. User agrees that there will be no alcoholic beverages sold or consumed in or about the Premises.

j. User agrees that there will be no tailgating, barbeques, picnics, or the like, in or about the Premises.

12. **Transfers.** User shall not, without the prior written consent of Owner, (1) assign, transfer, or encumber this Agreement or any estate or interest herein, whether directly or by operation of law, (2) permit any other entity to become User hereunder by merger, consolidation, or other reorganization, (3) if User is an entity other than a corporation whose stock is publicly traded, permit the transfer of an ownership interest in User so as to result in a change in the current control of User, (4) sublet any portion of the Premises, (5) grant any license, concession, or other right of occupancy of any portion of the Premises, or (6) permit the use of the Premises by any parties other than User, which consent may be withheld in Owner's sole and absolute discretion. Any purported transfer of rights or delegation of performance in violation of this Section is void.

13. **Self-Insurance.** The Lessee, being a municipal entity, as referenced in Section 768.28, Florida Statutes, agrees to be responsible to the limits set forth in such statute for its own negligent acts or intentional tortious actions, which result in claims or suits against the Lessee or Lessor, and agrees to be liable only to such to the statutory limits, whether applicable or not, for any damages proximately caused by said acts or omissions, or intentional tortious acts. Nothing contained in this section shall be construed to be a waiver by either party of any protections under sovereign immunity, Section 768.28, Florida Statutes, or any other similar provision of law. Nothing contained herein shall be construed to be a consent by either party to be sued by third parties in any matter arising out of this or any other Agreement.

14. **Default; Remedies.** Each of the following occurrences shall be an "Event of Default": (a) User's failure to pay the License Fee or any other sum due hereunder within fifteen (15) days after Owner has delivered written notice to User that the same is due; (b) User fails to procure, maintain and deliver to Owner evidence of the insurance policies and coverages as required hereunder; or (c) User's failure to perform, comply with, or observe any other agreement or obligation of User under this Agreement and the continuance of such failure for a period of more than ten (10) days after Owner has delivered to User written notice thereof. Upon the occurrence of an Event of Default, Owner may avail itself of any and all rights and remedies afforded Owner hereunder or by law or equity, including, but not limited to, the termination of this Agreement. Whether or not Owner exercises its right to terminate this Agreement, Owner shall be entitled to recover damages from User within fifteen (15) days after demand the cost of such cure.

15. **Surrender of Premises.** At the expiration or termination of this Agreement, User shall peaceably surrender the Premises to Owner in the same condition as received, reasonable wear and tear excepted, and if applicable, shall deliver to Owner all keys and/or other means of access to the Premises.

16. **Casualty; Eminent Domain.** If part of the Premises is destroyed by fire or other casualty ("Casualty") or taken by right of eminent domain or conveyed in lieu thereof so as to render the Premises unusable, Owner may terminate this Agreement and payment for the Premises shall be made only to the date of the Casualty or taking. Owner shall have no responsibility to User due to the unavailability of the Premises as a result of Casualty or taking.

17. **Risk of Loss; Indemnity.** The parking of motor vehicles on the Premises shall not create a bailment between Owner and the owner of any vehicle parked on the Premises. Owner shall not be responsible for any loss or damage occurring on or about the Premises to motor vehicles or accessories, or the contents thereof, caused by theft, collision, water, wind storm or any other causes whatsoever. Owner shall not be liable for any personal injury, death, disablement, or property damage sustained by any person, including, without limitation, by User, or its employees, contractors, agents, representatives, invitees and guests as a result of, or in connection with, the use of the Premises (other than damages caused by the gross negligence or willful misconduct of Owner), and User, as a condition to Owner entering into this Agreement, agrees to defend, indemnify and hold, to the extent provided in Florida Statute 768.28, Owner, and its agents, employees and contractors harmless from and against any and all claims, damages, demands, penalties, costs, liabilities, losses, and expenses (including reasonable attorneys' fees and expenses at the trial and appellate levels) that Owner incurs or suffers in connection with or arising from the use of the Premises by User, or its employees, contractors, agents, representatives, invitees and guests, or from any activity, work, alteration, construction, improvement or other things done, permitted or suffered by User, or its employees, contractors, agents, representatives, invitees and guests, in or about the Premises, in all such cases, except to the extent caused by the gross negligence or willful misconduct of Owner, or its agents, employees or contractors. This Section shall survive the expiration or earlier termination of this Agreement.

18. **WAIVER OF TRIAL BY JURY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, OWNER AND USER EACH WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LITIGATION OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE ARISING OUT OF OR WITH RESPECT TO THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS RELATED HERETO.**

19. **Independent Contractor.** This Agreement shall create an independent contractor relationship between the parties. Nothing in this Agreement shall be deemed to create a joint venture, partnership, agency, employment, or similar relationship. Neither party has authority to enter into any contract or incur any other obligation on behalf of or in the name of the other party. User shall be solely responsible for supervising its employees, contractors, agents, representatives, invitees and guests at all times while on the Premises. User shall be solely responsible for the safety and security of its employees, contractors, agents, representatives, invitees and guests while on the Premises.

20. **Force Majeure.** Owner does not guarantee the uninterrupted use of the Premises as the use of the Premises may be suspended or delayed by reason of fire, storm, explosion, strike, lockout, labor dispute, casualty, accident, or by reason of any other cause beyond Owner's control.

21. **Notices.** All notices and other communications given pursuant to this Agreement shall be in writing and shall be (1) mailed by first class, United States Mail, postage prepaid, certified, with return receipt requested, and addressed to the parties hereto at the address specified in Section 1 above; (2) hand delivered to the intended addressee, (3) sent by a nationally recognized overnight courier service, or (4) sent by facsimile transmission or via email during normal business hours followed by a confirmatory letter sent in another manner permitted hereunder. All notices shall be effective upon delivery to the address of the addressee. The parties hereto may change their addresses by giving notice thereof to the other in conformity with this provision

22. **Excluded Provider.** User represents and warrants that User is not, and at no time has been, excluded, debarred, suspended, or been otherwise determined to be, or identified as, ineligible to participate in any federally funded health care program including, but not limited to, the Medicare and Medicaid programs (collectively, the "Governmental Program"). User agrees to immediately notify Owner in the event that User or any employee or agent of User is excluded from participation in, or is otherwise unable to participate in, a Governmental Program, or is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any federal department or agency. In the event that User is excluded from any Governmental Program during the Term, or if at any time after the Effective Date of this Agreement it is determined that User is in breach of this Section, this Agreement shall, as of the effective date of such exclusion or breach, automatically terminate. User shall indemnify, defend, and hold harmless, to the extent provided in Florida Statute 768.28, Owner against all actions, claims, demands, liabilities, losses, damages, costs, and expenses, including reasonable attorneys' fees, arising, directly or indirectly, out of any violation of this Section by User.

23. **Attorneys' Fees.** In case suit shall be brought by either Owner or User for the breach of the provisions of this Agreement, the prevailing party shall recover from the non-prevailing party all costs and reasonable attorneys' fees incurred by the prevailing party, including those incurred on appeal

24. **Entire Agreement.** This Agreement, including the exhibits thereto, contains the entire agreement and understanding between the parties and supersedes any and all prior agreements or understandings of the parties.

25. **Amendments and Waivers.** This Agreement may not be amended except by instrument in writing signed by Owner and User. No provision of this Agreement shall be deemed to have been waived by Owner unless such waiver is in writing signed by Owner, and no custom or practice which may evolve between the parties in the administration of the terms hereof shall waive or diminish the right of Owner to insist upon the performance by User in strict accordance with the terms hereof. The terms and conditions contained in this Agreement shall inure to the benefit of and be binding upon the parties hereto, and upon their respective successors in interest and legal representatives, except as otherwise herein expressly provided. This Agreement is for the sole benefit of Owner and User, and, other than Owner's mortgagee, no third party shall be deemed a third party beneficiary hereof.

26. **Severability.** Any provision or provisions of this Agreement which are deemed invalid, void or illegal shall in no way effect impair or invalidate any other Agreement provisions, and the remaining Agreement provisions shall remain in full force and effect.

27. **Brokers.** Owner and User represent and warrant to each other that no brokerage commissions are due to any real estate broker in relation to this Agreement, and agree to indemnify and hold each other harmless for any damages, costs or legal fees which may be incurred as a result of any claims for such commissions in contravention of the representations in this Section.

28. **No Liability for Crimes.** Owner makes no representations or warranties with respect to crime in the area, undertakes no duty to protect against criminal acts and shall not be liable for any injury, wrongful death or property damage arising from any criminal acts. Owner may, from time to time, employ security personnel and equipment, however, such personnel and equipment are only for the protection of Owner's property. Owner reserves the right, in its sole discretion, to start, alter or terminate any such security services without notice.

29. **Hazardous Substances.** User shall not cause or permit any hazardous substances to be used, stored, generated or disposed of in, on or about the Premises by User, or its agents, contractors, servants, licensees, employees, or invitees. User shall indemnify and hold harmless the Owner from any and all claims, damages, fines, judgments, penalties,

costs, expenses or liabilities (including, without limitation, any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees) arising during or after the Term from or in connection with the use, storage, generation or disposal of hazardous substances in, on or about the Premises by User, or its agents, contractors, servants, licensees, employees, or invitees.

30. **Easements, Agreements, or Encumbrances.** The parties shall be bound by all existing and future easements, agreements, and encumbrances of record relating to the Premises including, but not limited to, any deed or plat restrictions, and rules and regulations governing the Premises or any part thereof as same may be amended.

31. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, exclusive of its choice of law rules. All disputes directly or indirectly related to this Agreement shall be litigated solely in the state and federal courts with jurisdiction over the county in which the Premises is located and no other place, and the parties hereby agree to waive any jurisdictional, venue, or inconvenient forum objections to such courts.

32. **Inconsistency with Law, Regulation or Standard.** In the event that it is determined that the terms of this Agreement are not in compliance with any law, regulation or standard of an accrediting body, or that there has been a change in the substance or interpretation of any law or regulation impacting either party or which materially impacts the relationship or duties of the parties hereunder or the requirements for fraud and abuse safe harbors or Stark exceptions, such that this Agreement is non-compliant or would be non-compliant on the effective date of the change, then the parties agree to negotiate any applicable terms or conditions of this Agreement. In the event the parties are unable to agree to new terms, Owner may terminate this Agreement upon the later of (i) thirty (30) days prior written notice by Owner to User, or (ii) the effective date of such change in law, regulation, or accreditation standard.

33. **Authority.** User hereby represents and warrants to Owner that User is a Florida municipal corporation, that User has full right and authority to execute and deliver this Agreement, and that each person signing on behalf of User is authorized to do so. Owner hereby represents and warrants to User that Owner is a duly formed and existing entity qualified to do business in the state in which the Premises are located, that Owner has full right and authority to execute and deliver this Agreement, and that each person signing on behalf of Owner is authorized to do so.

34. **Non-Publicity.** Owner has a policy prohibiting the use of its name, brand, likeness, trademarks, or other intellectual property for publicity and/or advertising purposes unless such publicity/advertising will have a materially beneficial impact on its image and/or reputation. Owner represents to User that few requests it receives for publicity and/or advertising (including joint releases and/or testimonials) meet this requirement. All requests to use Owner's name, brand, likeness, trademarks/intellectual property, statements from employees, results from questionnaires, or any other related requests ("Publicity/Advertising Requests") must be submitted in writing to Owner's Director of Communications who will facilitate Owner's internal review and approval process. User agrees that Owner will approve or disapprove all Publicity/Advertising Requests in its sole discretion.

35. **Construction.** The descriptive headings are for convenience and shall not control or affect the meaning or construction of any provision of this Agreement. Except as otherwise expressly provided in this Agreement or as the context otherwise requires, the following rules of interpretation apply to this Agreement: (i) the singular includes the plural and the plural includes the singular; (ii) "or" is used in the inclusive sense (and/or) and the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words "without limitation"; (iii) a reference to a person or entity includes its permitted successors and permitted assigns; (iv) a reference to one gender shall include any other gender; and (v) a reference in this Agreement to an Article, Section or Exhibit is to the referenced Article, Section or Exhibit of this Agreement. The parties agree that they have been represented by counsel, or had the opportunity to be represented by counsel, during the negotiation and preparation of this Agreement and therefore waive the application of any law or rule of construction providing that ambiguities in a contract will be construed against the party drafting such contract.

36. **Execution.** This Agreement may be executed in one or more counterparts, each of which when so executed and delivered (whether by facsimile, e-mail, or other electronic means) shall be deemed to be an original, and all of which taken together shall constitute one and the same instrument. A facsimile, PDF, or other electronic signature shall create a

valid and binding obligation of the party executing (or on whose behalf such signature is executed), and shall be deemed an original signature for all purposes under this Agreement.

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

Witnesses
As to "User"

USER
City of Dunedin

Attest:

Denise Kirkpatrick, City Clerk

By: _____
Julie Ward Bujalski, Mayor
Date: _____

Approved as to Form:

Thomas J. Trask, B.C.S, City Attorney

Witnesses
As to "Owner"

OWNER
Trustees of Mease Hospital, Inc. d/b/a Mease Dunedin Hospital

Name:

Print:

Name:

Print:

By:

Print Name:

Title:

Date:


Mark F. Elam


Sandra Bessel



President
30 March 2016

BAYCARE HEALTH SYSTEM
STANDARD PARKING LICENSE AGREEMENT

Exhibit A
Parking Lot Site Plan

