

46-436-C

AMENDATORY TRANSFER AGREEMENT

Between

**CITY AND COUNTY OF DENVER,
a municipal corporation and home rule city of the State of Colorado**

and

**DENVER HEALTH AND HOSPITAL AUTHORITY,
a body corporate and political subdivision of the State of Colorado**

January 1, 1997

AMENDATORY TRANSFER AGREEMENT

This Amendatory Transfer Agreement is made as of this first day of January 1997 between the City and County of Denver, a municipal corporation and home rule city organized and existing under the constitution and the laws of this State (the "City") and the Denver Health and Hospital Authority, a body corporate and political subdivision of the State (the "Authority"). The date of this Agreement is the Transfer Date agreed to by the City and the Authority as contemplated by Section 25-29-102 of the Act (as defined below), as now in effect, and is referred to in this Agreement as the Transfer Date.

RECITALS

WHEREAS the parties hereto have previously submitted to the City Council of the City the Transfer Agreement (the "Original Transfer Agreement") dated as of January 1, 1997, which Agreement is on file with the Clerk of the City; and

WHEREAS the parties desire to enter into certain amendments of the Original Transfer Agreement; and

WHEREAS words and terms not otherwise defined in this Agreement shall have the meaning assigned to them in the Original Transfer Agreement;

NOW THEREFORE, the parties hereby agree as follows:

1. The Original Transfer Agreement is hereby amended as follows:
 - a. Recital A shall now read as follows:
 - A. The Fifty-Ninth General Assembly (the "Legislature"), in its second regular session, enacted Senate Bill 94-099, which was signed into law by the Governor on April 19, 1994. Such Senate Bill as it currently reads and is currently codified, in part, in Sections 25-29-101 through 25-29-126 of the Colorado Revised Statutes is referred to herein as the "Act".
 - b. The following paragraph shall be inserted just prior to Article I:

The Authority is at all times subject to the provisions of the Act and will comply with the Act, in any event of a conflict with the terms of this Agreement, the provisions of the Act supersede including, but not limited to, those provisions in C.R.S. § 25-29-104 concerning the Mission and the clause barring discrimination against the City Employees in C.R.S. § 25-29-107.

c. The final paragraph of Section 4.4 is amended to change the references therein to "Sections 3.3 and 3.4" to "Sections 4.2 and 4.4" in both places such references are used.

d. Section 4.5 shall now read as follows:

4.5 Condition of the Real Property. The Authority accepts the Real Property "AS IS" excluding all liability for Environmental Matters arising out of or related to conditions existing as of the Transfer Date or events occurring prior to the Transfer Date, subject only to the Authority's agreement to pay, in the aggregate, the first settlement costs relating to the Real Property not exceeding \$2,000,000, if any, as stated in the definition of "Liabilities" in Article I.

e. Section 4.6(b) shall now read as follows:

b. The Authority may demolish or destroy any or all of the Buildings or Improvements at any time and from time to time, if: (i) the Authority replaces the demolished or destroyed Building or Improvement with another building or improvement having substantially the same value, but the Authority may substitute a building or improvement for the one demolished having substantially the same value but having a different function, but, in all events, within the scope of the Mission; (ii) the Authority determines, in its reasonable discretion, that such Building or Improvement (or the portion thereof not replaced pursuant to (i) above) is not necessary to assure proper operation and management of the Authority Health System; (iii) the Authority determines, in its reasonable discretion, that such Building or Improvement creates a dangerous condition or otherwise presents a threat to health and safety; or (iv) such demolition or destruction is necessary to comply with any applicable law, ordinance, regulation or court order; on the condition that the Authority shall not destroy or demolish any Building or Improvement pursuant to subparagraph (ii) above if the book value (as supported by the most recent audited financial statements of the Authority) of any such Buildings or Improvements exceeds 15 percent of the book value (as supported by the most recent audited financial statements of the Authority) of all of the buildings and improvements used in connection with the operation of the Authority Health System as of the date of the demolition, unless the Authority first obtains the written consent of the City.

f. Section 4.7(a) shall now read as follows:

a. The Authority may not sell or transfer any Real Property unless that sale is in compliance with C.R.S. § 25-29-104(2) and unless the City Council and the Mayor approve such sale or transfer. In the event that any of the Real Property is sold or transferred in compliance with C.R.S. § 25-29-104(2) and this section, the proceeds of any such sale shall be used by the Authority as set forth more fully in Section 4.7(b) below.

g. Section 4.7(b) is amended to change the words "Buildings and Improvements" in the first line thereof to the words "Real Property."

h. The introductory paragraph of Section 8.5 shall now read as follows:

8.5 Indemnification of City. On and after the Transfer Date, the Authority agrees to assume responsibility for and shall defend, indemnify and hold the City harmless from and against any and all claims, judgments, damages, losses, costs and expenses of whatever kind or nature with respect to:

i. Section 12.2 shall now read as follows:

12.2 Reverter Following Certain Defaults. (a) Upon dissolution of the Authority, all assets of the Authority, after satisfaction of creditors, shall automatically revert to the City.

(b) Upon the occurrence of a default under Section 11.1 (a), (b), (d) or (e) above, subject to (i) the Mortgagee's right to cure as set forth in Section 12.3 below and the failure of the Mortgagee to cure, and (ii) an additional thirty days prior written notice to the Authority from the City (after the expiration of the cure period described in (i) above), the City is hereby granted a power of termination with right of re-entry with respect to the Real Property and all other assets of the Authority. Upon reversion of the Real Property to the City, the Real Property and other assets of the Authority will revert or be conveyed to the City subject to the liens existing on the Real Property and such assets and the revenue stream generated by the Real Property and such assets existing as of the date the dissolution or the default giving rise to the power of termination and right of re-entry (as applicable); provided that such liens are not prohibited by the Act.

j. Section 12.6(b) shall now read as follows:

b. Liaison. The Liaison will work with the designated representative of the Mayor, the Auditor (with respect to those matters delegated to the Auditor under the City Charter) and/or the designated representative of the City Council in a good faith and collaborative effort by all parties to resolve the Dispute. The work of the Liaison shall be in addition to ongoing informal discussions and attempts to resolve disagreements, problems, and disputes among the parties and is not intended to limit those ongoing discussions and efforts.

k. The last sentence of Section 12.6(f) shall now read as follows:

All applicable cure periods set forth in Sections 11.1 and 11.2 and all statutes of limitations will be tolled pending completion of those procedures.

l. Section 13.1(d) shall now read as follows:

d. convey all property and assets of the Authority, both real and personal, to the City and otherwise cooperate in good faith to effect the transfer of the operations of the Authority Health System and all assets used in connection with the operation of the Authority Health System.

m. Section 14.1 shall now read as follows:

14.1 Entire Agreement. This Agreement together with the Personnel Services Agreement and Operating Agreement represent the entire agreement of the parties with respect to the subject matter of such agreements as of the date hereof.

n. Section 14.6 shall now read as follows:

14.6 Amendment. This Agreement may be amended from time to time, by approval and execution of one or more amendatory agreements approved and executed in the same manner as this Agreement.

o. Schedule 2.1 is amended to add the property described on Exhibit A attached hereto.

2. As herein amended, the Original Transfer Agreement is hereby ratified and reaffirmed in all particulars.

IN WITNESS WHEREOF, the parties hereto have executed this Amendatory Transfer Agreement as of the day and year first above written.

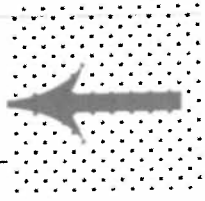
ATTEST:



CITY AND COUNTY OF DENVER, a
municipal corporation and Home Rule
City

By: *Elbra Wedgeworth*
~~Elbra Wedgeworth~~
Clerk and Recorder, Ex-Officio Clerk of
the City and County of Denver

By: *Wellington E. Webb*
Wellington E. Webb
Mayor



APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By: *Daniel E. Muse*
Daniel E. Muse
Attorney for the City and County of
Denver

By: *Donald Mares*
Donald Mares
Auditor

APPROVED AS TO FORM:

DENVER HEALTH AND HOSPITAL
AUTHORITY, a body corporate and
political subdivision of the State of
Colorado

By: *Patricia A. Gabow*
Attorney for the Denver
Health and Hospital Authority

By: *Paula Herzmark*
Patricia A. Gabow
Chief Executive Officer

By: *Paula Herzmark*
Paula Herzmark
Chairman of the Board of Directors

Exhibit A

Fee Property to Be Included on Schedule 2.1

"Eastside parking lot"

Block 83 and Lots 16 through 25 (inclusive), Block 78, Case and Ebert's Addition to the City of Denver, TOGETHER WITH the vacated Glenarm Street adjacent to said property, said vacated Glenarm Street is more particularly described in Ordinance 414, Series of 1978, as recorded August 7, 1978, in Book 1720 at Page 374, and TOGETHER WITH that portion of the vacated 28th Street adjacent to said property, which vacated 28th Street is more particularly described in the above-described ordinance and Ordinance 417, Series of 1974.