

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

Between the City Of Harker Heights, Texas
and HH/Killeen Health System, LLC

Background

A. On or about December 19, 2000, the City Council of the City of Harker Heights adopted an Economic Development Program (the "Program") as authorized by: (1) the City's broad and inherent authority as a home-rule municipality under its Charter; (2) Article XI, Section 5, of the Texas Constitution; (3) Article VIII, Section 52-a of the Texas Constitution; and (4) Chapter 380 of the Texas Local Government Code. The Program provides for the City of Harker Heights (the "City") to provide economic development incentive funds to: support the creation of new jobs or improve wage scales for existing jobs; make the City more attractive to new residents, businesses, and visitors; encourage residential and commercial growth and development; expand the City's tax base; and generally to promote local economic development.

B. HH/Killeen Health System, LLC, a Delaware limited liability company, is considering constructing a new hospital upon approximately twenty-two acres of undeveloped land fronting on West Central Texas Expressway near the western boundary of the City.

C. The City Council has found that the proposed hospital will provide substantial benefits to the City, and should be encouraged by means of certain incentives to be made subject to the terms of this Agreement.

D. The parties accordingly enter into this Agreement providing for economic incentives as an inducement for the Hospital to invest its time, energy, and resources in the City, and by extension to facilitate the goals and objectives of the Program.

Agreement

1. Definitions. In this Agreement:

(a) *Ad Valorem Taxes* means ordinary taxes assessed pursuant to Title 1 of the Texas Property Tax Code against the real property, improvements and the tangible personal property located at the Property, but shall not in any event include any sums constituting fines; penalties; interest; or rollback taxes.

(b) *Affiliated Entity* means, with respect to the entity in question, any person or entity that directly or indirectly controls, is controlled by, or is under common control with, the entity in question, and includes any direct or indirect subsidiary or parent corporation of the entity in question now existing or hereafter formed or acquired. For purposes of this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of another, whether through the ownership of voting securities, by contract, as trustee or executor, or otherwise.

- (c) *Agreement* means this Economic Development Incentive Agreement, together with its exhibits and addenda, as may be modified from time to time.
- (d) *Business days* means normal working business days (i.e., Monday through Friday of each calendar week, exclusive of federal and national bank holidays).
- (e) *City* means the City of Harker Heights, Texas, a home rule municipal corporation located in Bell County, Texas.
- (f) *Commencement Date* means January 1 of the first year following the year in which the City issues a Certificate of Occupancy for the Facility.
- (g) *Effective Date* means December 14, 2010.
- (h) *Facility* means an acute care hospital facility that the Hospital proposes to build and operate on the Property to provide medical and surgical treatment and nursing care for sick or injured persons, such facility being a minimum of 147,000 gross square feet in size, and providing for a minimum of seventy-five (75) patient beds, as depicted in the Concept Plan attached hereto as Exhibit A, other ancillary facilities such as reasonably required parking and landscaping, and any medical office buildings constructed on the Property in connection with such acute care hospital.
- (i) *Force Majeure* means any cause that, despite the exercise of due diligence by the affected party, is not reasonably within the control of and could not have been avoided by that party, including without limitation: acts of God; strikes, lockouts and other labor disputes or industrial stoppages; interruption of communications or public utilities; orders or actions of any governmental or military authority; blockade or embargo; expropriation or confiscation of facilities; civil riots, commotion or disturbances; acts of war, terrorism, the public enemy, revolution, rebellion or sabotage; materials shortages; rationing; fires, floods, lightning, storms, hurricanes, tornados, epidemics, earthquakes, landslides, drought, explosions or other calamity; and unavoidable accidents or breakdowns.
- (j) *Hospital* means HH/Killeen Health System, LLC, a Delaware limited liability company, having its principal place of business in Plano, Texas.
- (k) *Incentives* means, collectively, all economic development incentives described in Paragraph 5 of this Agreement.
- (l) *Infrastructure* means extensions of the water line, sanitary sewer, and storm drainage conduit as generally described in Exhibit B.
- (m) *Maintenance Security* means a maintenance bond or other surety instrument, such as a letter of credit or escrow account deposit.
- (n) *Property* means real property described in Exhibit C.

(o) *Term* means the period of time beginning on the Effective Date of this Agreement, and ending on the seventh (7th) anniversary of the Commencement Date, unless sooner terminated as provided herein.

2. City Council Findings. By approval of this Agreement, the City Council of the City of Harker Heights finds and determines that:

(a) If the Facility is completed, the Hospital will create 350 new full-time jobs in the City, with an annual payroll in excess of \$20 million within the first twelve (12) months following the Commencement Date.

(b) The Facility and the Property are expected to add at least \$87 million dollars in appraised value to the City's tax rolls, thereby providing additional revenue for the City to fund critical public services, and reducing the City's dependence on income from residential property taxes.

(c) The Facility would be the first hospital located in the City, thereby offering the citizens new choices and greater convenience in meeting their health care needs.

(d) The presence of the Facility in the City will make the City more attractive to families and businesses, thereby promoting additional residential and commercial growth and development.

(e) The Infrastructure that will be installed to serve the Facility will also serve other undeveloped and unproductive properties in the same area, thereby encouraging quality development on those properties. In addition, the Infrastructure will provide for more robust and reliable water service to the Savannah Heights residential subdivision located south of the Property.

(f) The benefits and opportunities that would flow from the Facility locating in the City are unique to the Facility, and will likely be diminished or eliminated if other businesses locate on the Property.

(g) The Incentives authorized by this Agreement will encourage the Hospital to locate the Facility in the City when it might not otherwise do so.

(h) This Agreement provides reasonable and adequate safeguards to ensure that the public receives sufficient benefits in exchange for the Incentives.

(i) This Agreement benefits the public health, safety and welfare, and should be approved.

3. Hospital Obligations.

(a) *Construct and Operate the Facility.* The Hospital will proceed with reasonable commercial diligence to construct the Facility on the Property, and to have the Facility fully operational and open for business not later than December 31, 2012, subject to

events of Force Majeure. Thereafter, the Hospital shall continuously operate the Facility and keep the same open for business during the remainder of the Term. Provided that the Hospital is proceeding with reasonable commercial diligence to resume operation, the Hospital shall be excused from the obligation to operate to the extent (and only to the extent) that the failure to operate is due to (i) a casualty loss to, condemnation of, or renovation of such Facility, or (ii) a health/safety issue at such Facility, which is being repaired, reconstructed, cleaned or remediated.

(b) *Infrastructure.*

- (1) The Hospital shall design and install the Infrastructure or cause the same to be designed and installed. The installation shall be performed in a good and workmanlike manner using materials in good condition. The work shall commence not later than June 1, 2011, and shall be completed within 210 days thereafter, subject to events of Force Majeure.
- (2) The Hospital will dedicate the Infrastructure to the City, together with such easements as may be reasonably necessary for the City to inspect, operate, reconstruct, maintain, repair, and replace the Infrastructure or any portion thereof, at such time as may be required for the Hospital to obtain any necessary building permits for the Facility. The dedicatory instrument and easements shall be upon forms reasonably acceptable to the City and the Hospital. The Hospital understands and agrees that the City will not accept a dedication of the Infrastructure unless and until the Infrastructure is approved by the City's Public Works Director, which approval shall not be unreasonably withheld, conditioned or delayed. The Hospital shall be solely responsible for all repairs and maintenance until the Infrastructure is accepted by the City, and thereafter as provided by the Maintenance Security required herein.
- (3) At the time the Hospital offers the Infrastructure for dedication, the Hospital shall furnish the City with the following, each in form reasonably acceptable to the City:
 - i. A Maintenance Security to assure the quality of materials and workmanship, and maintenance of the Infrastructure, including the City's cost of collecting the guaranteed funds and administering the correction or replacement of the Infrastructure. The Maintenance Security shall be in amount equal to twenty percent (20%) of the cost of the Infrastructure as verified by the City Engineer, but not to exceed Sixty-Six Thousand Dollars (\$66,000.00), and shall provide coverage for a period of one (1) year, beginning on the date of the City's acceptance of the Infrastructure. Should a defect or failure occur within the period of coverage, the City may require that the term of coverage under the Maintenance Security be extended for one (1) full calendar year from the date the City accepts the correction of the defect or failure, which acceptance will not be unreasonably withheld, conditioned or delayed, and in any event the City shall approve or disapprove of such correction within thirty (30) days following notification of completion of any such correction by the Hospital.

- ii. A waiver of lien or a lien subordination agreement executed by each contractor, laborer and supplier that has furnished labor and/or materials in connection with the completed aspects of the Infrastructure.
 - iii. An assignment of any third party warranties on the Infrastructure.
- (4) During the Term hereof the Hospital shall maintain commercially reasonable detailed and accurate records of all contracts, receipts and expenditures made or incurred in connection with the installation of the Infrastructure, and shall make same available to the City for inspection in the manner specified by Paragraph 4 hereof.
- (c) *Facility Valuation.* From the Commencement Date through the remainder of the Term, the Facility and the Property shall have an aggregate appraised value by the Bell County Tax Appraisal District of not less than \$87 million.
- (d) *Job Creation.* From the first (1st) anniversary of the Commencement Date through the remainder of the Term, the Hospital shall maintain at least three hundred fifty (350) new full-time equivalent permanent jobs at the Facility. Any employee transferring from another business owned or operated by the Hospital or an Affiliated Entity located within the City may not be considered for purposes of meeting this standard.
- (e) *Wage Scales.* From the first (1st) anniversary of the Commencement Date through the remainder of the Term, the Hospital shall maintain an aggregate annual payroll at the Facility of not less than \$20 million.
- (f) *Employment of Undocumented Workers.* During the Term of this Agreement, the Hospital agrees not to knowingly employ any undocumented workers and if convicted of a violation under 8 U.S.C. § 1324a(f), the Hospital shall repay the Incentives and any other funds received by the Hospital from the City as of the date of such violation, such payment being due within 120 business days after the date the Hospital is notified by the City of such violation, plus interest at the rate periodically announced by the *Wall Street Journal* as the prime or base commercial lending rate, or if the *Wall Street Journal* shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by the City) as its prime or base commercial lending rate, from the date of such notice until paid. In no event shall any provision hereof be deemed to have waived any defense the Hospital may have to any allegation of a violation of 8 U.S.C. § 1324a(f).
- (g) *Legal Compliance.* The Hospital and any permitted assignee shall at all times strictly comply with this Agreement and all rules, orders, laws and regulations (as the same may be amended from time to time) that relate in any way to the Property, the Facility, and the activities conducted by or on behalf of the Hospital, the Affiliated Entities, and any permitted assignee.
- (h) *Notice Required.* The Hospital shall notify the City within three (3) business days of learning of any: (1) event of default hereunder; (2) change in the Hospital's name or

mailing address, (3) material adverse change in the Hospital's financial condition; (4) material adverse change in the ability of the Hospital to perform its obligations hereunder; or (5) any representation or warranty made by the Hospital in this Agreement that is no longer true and correct.

(i) *Subordination, Non-Disturbance and Attornment.* If any mortgage, deed of trust, or other lien (each a "Mortgage") presently existing encumbers the Property or any portion of it, then the Hospital agrees, within thirty (30) days after the Effective Date, to deliver to the City a subordination, non-disturbance and attornment agreement on a form reasonably satisfactory to the City's legal counsel, pursuant to which the holder of the Mortgage agrees that the City's rights and interests under this Agreement shall not be disturbed as long as the City does not default under this Agreement (after giving effect to all applicable cure periods).

(j) *Refund of Overpayment.* The payment or delivery of any Incentives hereunder shall not be an admission of the Hospital's unqualified entitlement to same, but the City retains the right to review the Hospital's entitlement and to require such corrective action as may be supported by this Agreement, including without limitation requiring the Hospital to refund any overpayment to the City upon demand. The Hospital's obligations under this paragraph shall survive termination of this Agreement.

4. Reports and Inspections.

(a) From the Commencement Date through the remainder of the Term, the Hospital shall certify to the City each March that it has complied with the terms of this Agreement during the preceding calendar year. Together with each certification of compliance, the Hospital shall submit such written information, records, and documents as the City may reasonably require to verify the Hospital's certification of compliance.

(b) The Hospital shall prepare and maintain its records in accordance with good business and accounting practices consistently applied with respect to itself or any Affiliated Entity.

(c) All information required to be provided by the Hospital to the City shall be sent to the attention of the City's Finance Director at the address specified for giving notice in this Agreement.

(d) The City shall have the right to enter the Property and the Facility at reasonable times and upon at least 24 hour prior written notice to monitor compliance with this Agreement.

(e) If the City notes any deficiencies based upon the reports and inspections required by this section, it shall provide written notice thereof to the Hospital together with a statement of the measures required to correct such deficiencies.

(f) Nothing herein shall be construed to require the Hospital to disclose information that it is prohibited by law from disclosing.

(g) The Hospital acknowledges that pursuant to the Texas Public Information Act, Government Code Chapter 552, the City's ability to prevent disclosure of information is limited by law. However, the City agrees to the extent allowed by law to keep all information and documentation received from the Hospital pursuant to this Agreement ("Confidential Information") confidential. The City will only provide access to the Confidential Information to its employees, independent contractors or agents on a "need-to-know" basis. The City will use the Confidential Information solely for the purposes of exercising its rights and performing its obligations hereunder, and for monitoring and enforcing the Hospital's obligations hereunder. The City will not, except as permitted herein or with the Hospital's prior written authorization: (i) disclose the Confidential Information to any person; or (ii) copy, photograph, photocopy, reduce to writing or otherwise reproduce or duplicate the Confidential Information. In the event the City is requested or becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, the City shall provide the Hospital with prompt written notice of such request or requirement so that the Hospital may seek a protective order or other appropriate remedy, and/or waive compliance with the terms of this paragraph.

5. Economic Incentives to the Hospital.

(a) *Incentives Provided.* As consideration for Hospital's contractual obligations hereunder and subject to Hospital's timely performance thereof, the City agrees to provide the following Incentives to the Hospital:

- (1) *Ad Valorem Tax Refund.* From the Commencement Date through the remainder of the Term, the City will refund to the Hospital an amount equal to one hundred percent (100%) of the Ad Valorem Taxes actually distributed to the City by the Bell County Tax Assessor-Collector (net of any discounts, taxpayer refunds, and administrative fees). Such refund shall be paid to the Hospital within thirty (30) days following the City's verification of the amount due.
- (2) *Infrastructure Participation.* Within thirty (30) days following the Commencement Date, and subject to acceptance of the Infrastructure, receipt of the Maintenance Security, and receipt of all records the City deems reasonably necessary to verify the expenditures, the City will pay to the Hospital a sum not to exceed \$165,000.00, that being one-half of the estimated cost of construction of the Improvements as shown in Exhibit B.
- (3) *Permits and Fees.* The City agrees to waive its standard fees for building permits and utility hookups. The Hospital shall receive all permits reasonably necessary for completion of the Facility in accordance with and subject to the terms of this Agreement and all applicable laws and regulations. The City shall schedule, convene, and conclude any required public hearings and other proceedings in an expeditious manner consistent with applicable laws and regulations, conditioned upon the Hospital's timely application therefore.

- (4) *City Group Health Insurance.* To the extent permitted by law, the City agrees that in connection with any procurement process initiated with respect to the health insurance for employees of the City, the proximity of any healthcare provider(s) to the City shall be a positive criteria in the award of the contract.
- (5) *Funding.* The Incentives provided by this Paragraph shall be paid from current revenues in the City's General Fund.
- (b) *Suspension or Offset of Incentives.* If the Hospital or any Affiliated Entity is delinquent in payment to the City of any sums beyond any applicable notice or cure period (including without limitation any fees, fines, assessments, taxes, and charges for water, sewer, garbage, drainage improvements, or otherwise), and regardless of whether the amount due has been reduced to judgment by a court, the City may: (i) suspend all Incentives owed by it under this Agreement until such sums are paid in full; and (ii) deduct any such sums or the value thereof from the Incentives payable by the City.
- (c) *Termination of Incentives.* Should any legal impediment arise during the Term of this Agreement, including a change in law, that prevents or limits the City's ability to lawfully comply with this Agreement or to provide the Incentives required hereby, the City may without further liability to the Hospital terminate the Incentives to the extent (but only to the extent) of such impediment. In the event that such impediment prohibits the City from providing the Incentives set forth in Section 5(a)(1) of this Agreement regarding Ad Valorem Taxes, the Hospital shall have no further obligations hereunder except for obligations that survive termination under the express terms of this Agreement.
- (d) *Future Exemptions.* For a period of fifteen (15) years following the Commencement Date, so long as the Hospital is owned or controlled by LHP Hospital Group, Inc. a Delaware corporation ("LHP") or an Affiliated Entity of LHP, the Hospital waives any right to claim an exemption from Ad Valorem Taxes, and covenants not to apply for an exemption under Chapter 11 of the Texas Tax Code (an "Exemption"). In the event that (i) the Hospital sells or otherwise transfers ownership of the Facility, or (ii) the ownership or control of the Hospital is transferred by LHP, to an entity that qualifies for an Exemption, the Hospital shall pay to the City, within thirty (30) days following the consummation of such sale or transfer of ownership or control contemplated hereby (the "Closing"), an amount equal to (A) the total amount of Ad Valorem Taxes refunded by the City to the Hospital under this Agreement up to and including the date of such Closing, less (B) the total amount of Ad Valorem Taxes paid by the Hospital to the City since the Commencement Date of this Agreement which were not refunded by the City to the Hospital pursuant to Section 5(a)(1) hereof. The obligations of the Hospital shall be guaranteed by LHP pursuant to a separate Guaranty Agreement in form reasonably acceptable to the City and the Hospital which will require that LHP have and maintain a net worth of at least \$5,000,000. This provision is for the sole benefit of the City, and the City may waive or enforce this provision at its discretion.

6. Default, Termination, and Remedies.

(a) *Default.* The Hospital shall be in default if, during the Term hereof: (1) a receiver is appointed for the Facility, the Property, the Hospital or an Affiliated Entity and is not discharged within ninety (90) days of such appointment; (2) a bankruptcy or insolvency proceeding is commenced against or by the Hospital, and the Hospital fails to have the proceedings dismissed within ninety (90) days; (3) the Hospital is dissolved; (4) the Hospital fails to comply with any term, condition, or covenant of this Agreement that is binding on the Hospital, and such failure continues beyond any period provided herein for cure of such failure; (5) any warranty, covenant, or representation of the Hospital in this Agreement or in any other written agreement between the City and the Hospital is materially false when made; or (6) the Property or the Facility is impaired by loss, theft, damage, levy and execution, issuance of an official writ or order of seizure, or destruction, unless it is restored to its former condition with reasonable commercial diligence.

(b) *Notice of Default.* The party alleging a default hereunder will give the other party not less than fifteen (15) days' written notice specifying the nature of the alleged default and, when appropriate, the manner in which the alleged default may be satisfactorily cured. Notwithstanding the preceding sentence, if the nature of the alleged default is such that the giving of such written notice is impractical due to a threat of harm to life or property then the party alleging the default or breach shall give the other party such notice as may be reasonable under the circumstances.

(c) *City's Remedies.* Upon the occurrence of a default by the Hospital which is not timely cured, the City may (but shall not be obligated to) terminate this Agreement and seek recovery of any damage suffered by the City; discontinue performance of this Agreement until the default is cured; seek specific performance of this Agreement by the Hospital; withhold further Incentives until the default is cured; exercise any other remedy granted by this Agreement or by applicable law; or any combination of the foregoing, such rights and remedies being cumulative, and the exercise of any particular right or remedy shall not preclude the exercise of any other right or remedy.

(d) *Hospital's Remedies.* Upon the occurrence of a default by the City which is not timely cured, the Hospital may (but shall not be obligated to) terminate this Agreement and seek recovery of any damage suffered by the Hospital; seek specific performance of this Agreement by the City; exercise any other remedy granted by this Agreement or by applicable law; or any combination of the foregoing, such rights and remedies being cumulative, and the exercise of any particular right or remedy shall not preclude the exercise of any other right or remedy.

(e) *Waivers in Writing.* All waivers must be in writing and signed by the party to be bound. Failure or delay in giving notice of default shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failure or delay by either party to assert any of its rights or remedies as to any default shall not operate as a waiver of the default, nor shall it deprive the party

of the right to institute and maintain any actions or proceedings it deems necessary to protect or enforce its rights or remedies.

(f) *Hospital's Right to Terminate.* Hospital is entering into this Agreement based upon the expectation that it will receive additional incentives from Bell County and the Central Texas College Tax District. If the Hospital, in the exercise of its sole and absolute discretion, is not satisfied with such arrangements, Hospital may terminate this Agreement in its entirety by giving notice to the City not later than sixty (60) days following the Effective Date. From and after the date of Hospital's notice to terminate, neither party will have further duties or obligations to the other under this Agreement. If Hospital does not give such notice within the time allowed, this Agreement will no longer be subject to termination pursuant to this paragraph. Time is of the essence for this paragraph, and strict compliance with the time for performance is required. Furthermore, the Hospital's obligations under this Agreement are conditioned on the consummation of the sale pursuant to that certain Contract of Sale dated effective June 14, 2010 (the "Contract"), by and between the Hospital, as Purchaser, and WB Whitis Investments, Ltd., a Texas limited partnership ("Seller"). In the event that the consummation of the purchase and sale of the Property does not occur pursuant to the terms of the Contract or the Contract is terminated by either the Hospital or Seller pursuant to the terms thereof, the Hospital shall be entitled to terminate this Agreement by delivering written notice thereof to the City.

(g) *Waiver of Jury.* THE HOSPITAL AND THE CITY EACH WAIVE A TRIAL BY JURY of any or all issues arising in any action or proceeding between the parties hereto or their successors, under or connected with this Agreement, or any of its provisions.

(h) *Waiver and Certain Relief.* NOTWITHSTANDING ANY CONTRARY PROVISION HEREIN, THE CITY AND THE HOSPITAL EACH WAIVE ALL CLAIMS FOR SPECIAL, INDIRECT, INCIDENTAL AND CONSEQUENTIAL DAMAGES.

(i) *Attorney's Fees & Court Costs.* The prevailing party in any legal proceeding related to this Agreement is entitled to recover reasonable attorney's fees and all costs of such proceeding incurred by the prevailing party.

7. Hospital's Representations. As a material inducement to the City to enter into this Agreement, the Hospital warrants and represents to City that the following are true as of the Effective Date, and will be true throughout the Term hereof:

(a) The Hospital has full power and authority to execute and deliver this Agreement and to perform its obligations under it. This Agreement constitutes the valid and legally binding obligation of the Hospital, and all requisite action has been taken to make this Agreement valid and binding on the Hospital in accordance with its terms.

(b) Neither the execution and delivery of this Agreement by Hospital, nor the performance by the Hospital of its obligations hereunder, will violate any statute,

regulation, rule, judgment, order, decree, stipulation, injunction, charge or other restriction of any government, governmental agency, or court to which Hospital is subject or any provision of the governing instruments of the Hospital.

(c) There are no attachments, executions, or assignments for the benefit of creditors or voluntary or involuntary proceedings in bankruptcy or under any other debtor-in-relief laws pending against the Hospital.

(d) There are no other legal actions, suits, arbitrations, or other legal administrative or other governmental proceedings pending or threatened against the Hospital, its properties, assets, or business that, if adversely determined, could have a material adverse effect on the Hospital's ability to perform its obligations hereunder, and the Hospital is not aware of any facts which to its knowledge might result in any such action, suit, arbitration, or other proceedings.

(e) The Hospital is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Delaware, and having authority to do business in Texas, and with full power to carry on its business as now being conducted.

(f) The Hospital possesses or will acquire all permits, registrations, approvals, consents, licenses, trademarks, trademark rights, trade names, trade name rights, and copyrights needed to conduct its business in the manner contemplated by this Agreement.

(g) The Hospital has the expertise, experience, and resources necessary to perform its obligations hereunder with the degree of skill, diligence, efficiency and professionalism normally demonstrated by others engaged in performing similar activities throughout the State of Texas.

(h) To the current actual knowledge of the Hospital, the information furnished by or on behalf of the Hospital to the City is true and correct in all material respects.

The Hospital acknowledges that the City has justifiably relied upon the foregoing representations and warranties, and that City would not have entered into this Agreement but for the Hospital's representations as to the truthfulness and accuracy of the same.

8. Force Majeure. If a party shall be delayed, hindered, or prevented from performance of any of its obligations by reason of Force Majeure, and such party is not otherwise in default, the time for performance of such obligation shall be extended for the period of such delay, provided that the affected party shall: (i) give prompt written notice to the other party; (ii) diligently attempt to remove, resolve, or otherwise eliminate such event, keep the other party advised with respect thereto; and (iii) commence performance of its obligations hereunder immediately upon such removal, resolution, or elimination.

9. Cooperation in the Event of Legal Challenge. The parties agree to cooperate in defending any legal action instituted by a third party or other governmental entity or official challenging (a) the validity of one or more provisions of this Agreement; (b) the state and local

legislation authorizing the City to enter into this Agreement; or (c) any discretionary action and approvals of the City regarding permits or other entitlements issued pursuant to this Agreement.

10. Miscellaneous Provisions.

- (a) *Signatories.* Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement and any related documents. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.
- (b) *Hospital's Undertaking.* The Hospital's efforts to establish the Facility and perform its obligations hereunder constitute a private undertaking. The Hospital shall have full power over, and exclusive control of, the specific details of its undertaking, subject only to the general limitations and obligations under this Agreement and applicable local, state and federal statutes and regulations. Nothing contained in this Agreement or in any related document shall be construed as making the City and the Hospital joint venturers or partners, nor shall the Hospital be or represent itself to be a contractor, agent or employee of the City.
- (c) *Memorandum of Record.* The City, at its option, may record a memorandum of this Agreement, which memorandum the Hospital agrees to properly execute within ten (10) days after a request to do so from the City. Any such memorandum shall be executed in a recordable form, shall set forth a summary of the Hospital's obligations and such other terms of this Agreement as the City deems necessary, shall expressly state that it is executed pursuant to the provisions contained in this Agreement, and that is not intended to vary the terms and conditions of this Agreement.
- (d) *Further Assurances.* Each party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this Agreement and all transactions contemplated by this Agreement.
- (e) *Notices.* All notices under this Agreement shall be in writing, and (i) delivered personally to the person to whom the notice is to be given, (ii) given by certified or registered mail, return receipt requested, (iii) delivered via Federal Express or any other nationally recognized courier service that provides a return receipt showing the name of the recipient and the date of actual delivery, or (iv) given by e-mail or facsimile transmission. Notice given by mail shall be effective three (3) days (exclusive of Saturdays, Sundays and postal holidays) after the same is deposited in the United States Postal Service, properly post-paid and certified and addressed to the party to be notified. Notice given by e-mail or facsimile transmission shall only be deemed received if the transmission thereof is

confirmed and such notice is followed by written notice as provided in subparts (i) through (iii) within three (3) business days following the e-mail or facsimile notice. Notice given in any other manner shall be effective only if and when actually delivered to the party to be notified or at such party's address for purposes of notice as set forth herein. A change in the notice address of any party may be effected by serving written notice of such change and of such new address upon the other party in the manner provided herein. Initially, notices shall be addressed to:

If to the City: City of Harker Heights
 ATTN.: City Manager
 P.O. Box 2518
 Harker Heights, TX 76548
 Fax: (254) 953-5612
 Email: scarpenter@ci.harker-heights.tx.us

If to Hospital: HH/Killeen Health System, LLC

ATTN: Executive Vice President of Administration
 2800 North Dallas Parkway, Suite 200
 Plano, Texas 75093
 Fax: (866) 404-2421

With a copy to: LHP Hospital Group, Inc.
 ATTN: General Counsel
 2800 North Dallas Parkway, Suite 200
 Plano, Texas 75093
 Fax: (866) 404-2421

- (f) *Law Governing and Venue.* The laws of the State of Texas govern this Agreement without regard to any conflict of laws provision and no lawsuit may be prosecuted on this Agreement except in a court of competent jurisdiction located in Bell County, Texas. The Hospital specifically consents to and waives any objections to *in personam* jurisdiction in Bell County, Texas.
- (g) *Assignment.* The Hospital may not assign this Agreement to any other person or entity unless the City consents in writing to the assignment, and any attempted or purported assignment in the absence of such consent shall be void; provided; that notwithstanding the foregoing or any provision contained in this Agreement to the contrary, the Hospital may assign or transfer the benefits of this Agreement to a third party in connection with the development of any portion of the Property for the construction of a medical office building or other ancillary facility (an "MOB") which will complement the Facility (each, a "Developer"). By way of example but not limitation, in the event that the Hospital ground leases or sells a portion of the Property to a Developer for the construction of an MOB, the Incentives provided hereunder will be applicable to any Ad Valorem Taxes

applicable to the MOB or the portion of the Property owned or leased by such Developer which are assessed against and payable by such Developer. However, in no event shall any assignment by the Hospital (i) be made to any person or entity that is or will be exempt from the payment of Ad Valorem taxes upon the expiration or termination of this Agreement or (ii) relieve the Hospital of its obligations hereunder except to the extent expressly agreed in writing by the City.

- (h) *Severability.* If any provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction, the entire Agreement shall not be void, but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties.
- (i) *Binding Effect.* This Agreement shall be binding upon, and shall inure to the benefit of, the parties' respective successors and permitted assigns.
- (j) *Third Party Beneficiaries.* There are no third-party beneficiaries of this Agreement other than any Developer.
- (k) *Interpretation.* Each party has carefully read this entire Agreement, understands the meaning and effect of each and every provision contained herein, and acknowledges that it has relied on its own judgment in entering into this Agreement. Each party executes this Agreement only after first having obtained, or having had the opportunity to obtain, competent legal advice. The use of the masculine or neuter genders herein shall include the masculine, feminine and neuter genders. The singular form shall include the plural when the context requires. Headings used throughout this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, restrict, modify, amplify or aid in the interpretation or construction of the meaning of the provisions of this Agreement. The terms "hereof," "hereunder" and "herein" shall refer to this Agreement as a whole, inclusive of all exhibits, except as otherwise expressly provided. This Agreement represents the result of extensive discussion between the parties, and thus should not be construed strictly for or against either party.
- (l) *Time; Business Days.* Time is of the essence with respect to this Agreement. In the event that any time period expires or any event is to occur pursuant to the terms of this Agreement on a date which is not a business day, then such time period shall expire or such event shall occur on the first business day following such scheduled date.
- (m) *Entire Agreement.* This Agreement is executed in multiple originals, each of which is deemed to be an original. This Agreement, including all exhibits, constitutes the entire understanding and agreement of the parties and supersedes all other agreements, negotiations, and understandings between the parties. The parties acknowledge that neither has made any representation to induce execution of this Agreement, except such representations as are specifically set forth herein. This Agreement may be cancelled or amended by mutual consent of the parties,

and to be effective an amendment or agreed cancellation must be in writing and signed by each party in a form suitable for recording in the official records of Bell County. The exhibits, attachments and addenda which are a part of this Agreement are:

Exhibit A: Facility Concept Plan
Exhibit B: Infrastructure
Exhibit C: Property Description

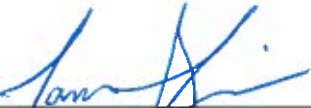
- (n) *Multiple Counterparts.* To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgment of, or on behalf of, each party, or that the signature of all persons required to bind any party, or the acknowledgment of such party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, and the respective acknowledgments of, each of the parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures or acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.
- (o) *Confidentiality.* Until the closing of the purchase and sale contemplated by the Contract, the City and the Hospital agree to keep this Agreement and its contents confidential and not to disclose the same to any third party until the closing of the purchase and sale contemplated by the Contract except (i) attorneys or accountants hired by either of them, (ii) consultants and contractors hired in connection with Purchaser's due diligence review, or (iii) as required by applicable law (including without limitation the Texas Public Information Act) or judicial or administrative order. Notwithstanding the foregoing or any contrary agreement or understanding, the parties (and each of their respective employees, representatives or other agents) may disclose to any and all persons, without limitation of any kind, the U.S. federal income tax treatment and U.S. federal income tax structure of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to them relating to such U.S. federal income tax treatment and U.S. federal income tax structure.

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CITY OF HARKER HEIGHTS

HH/KILLEEN HEALTH SYSTEM, LLC,
a Delaware limited liability company

By: 
Steve Carpenter, City Manager

By: 
Thomas H. Frazier, Jr.,
Executive Vice President of Administration

Date: 12-16-10

Date: 12/16/10

ATTEST:


Patricia Brunson, City Secretary

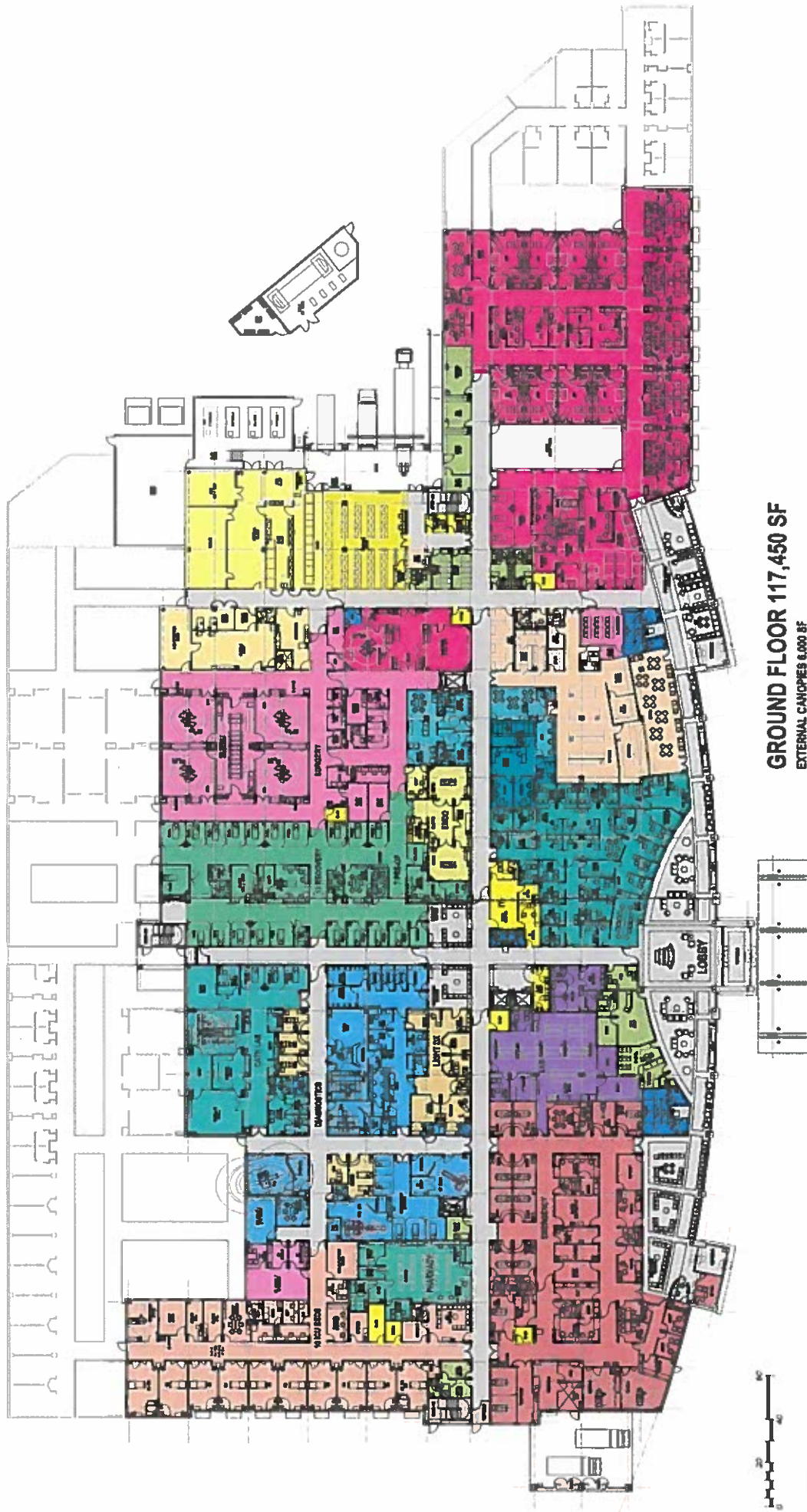
Attach Exhibits:

Exhibit A: Facility Concept Plan

Exhibit B: Infrastructure

Exhibit C: Property Description





GROUND FLOOR 117,450 SF
 EXTERNAL CHANGES 6,000 SF

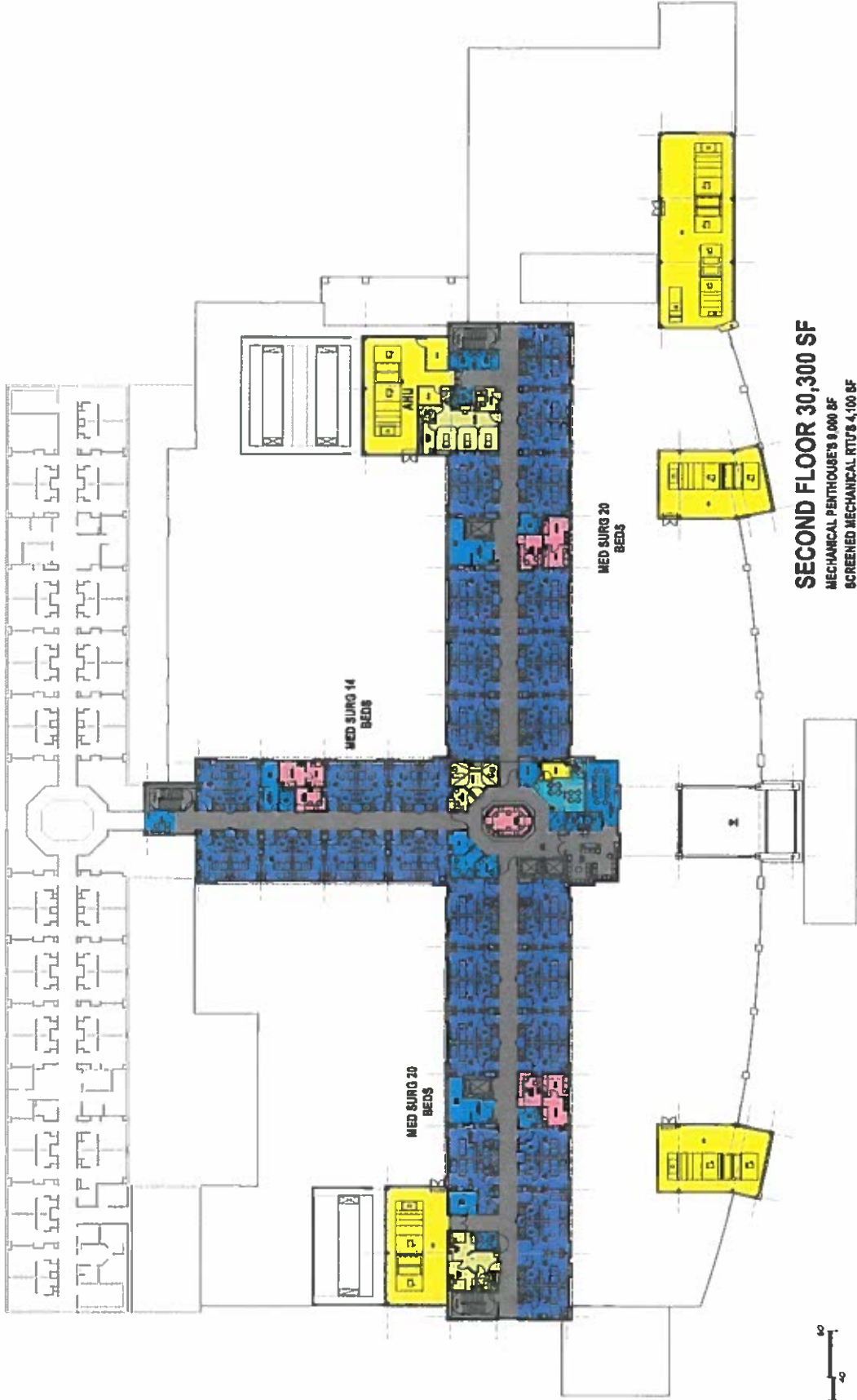


September 18, 2010



Proposed Medical Center

EXHIBIT A



SECOND FLOOR 30,300 SF
 MECHANICAL PENTHOUSE'S 9,000 SF
 SCREENED MECHANICAL RTU'S 4,100 SF



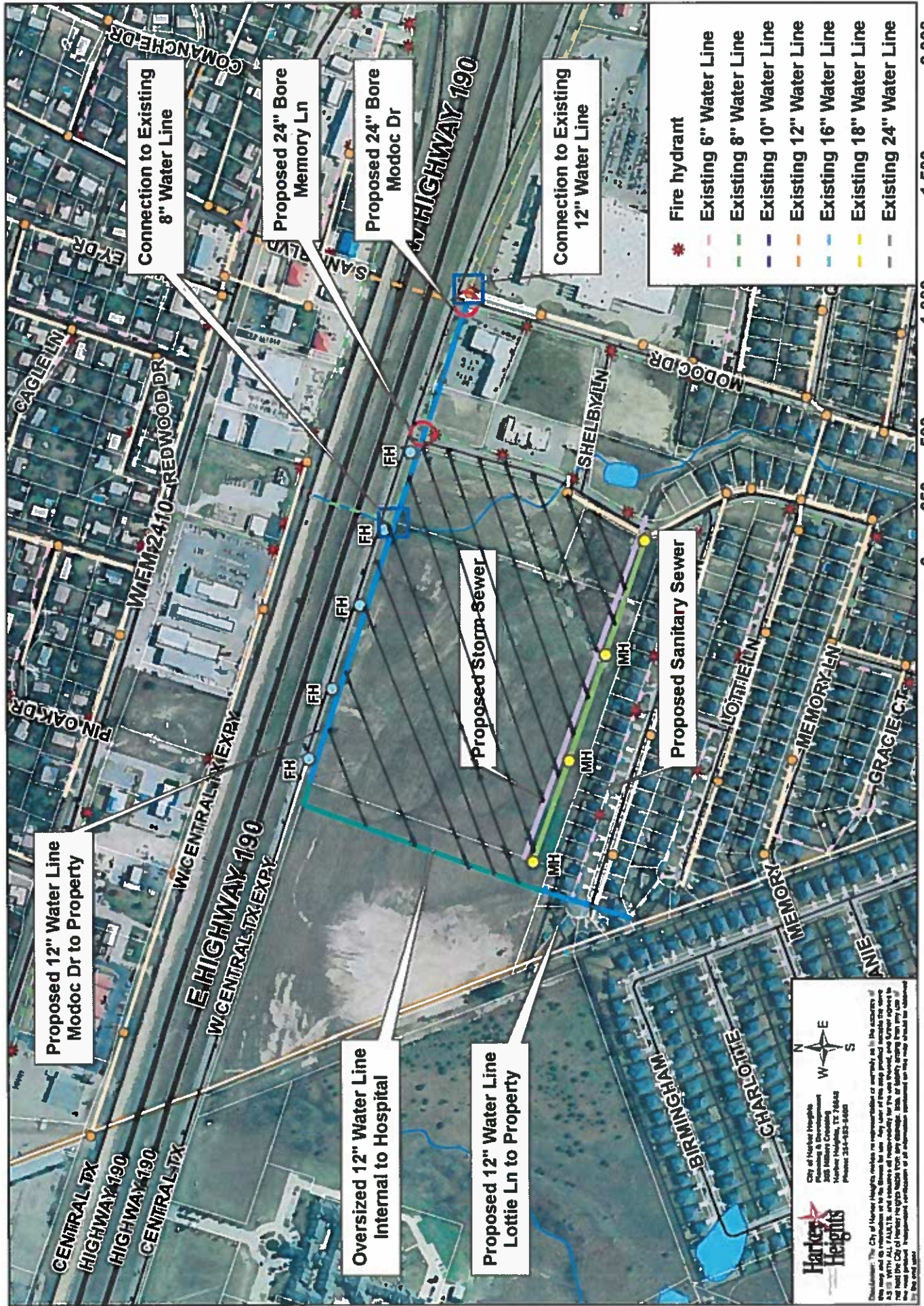
September 13, 2010

Proposed Medical Center

Ascension
Group
Architects

EXHIBIT A

Infrastructure to Hospital Site



City of Harbor Heights
 Planning & Engineering
 200 Millers Crossing
 Harbor Heights, TX 75845
 Phone: 351-931-6600

Disclaimer: The City of Harbor Heights makes no representation or warranty as to the accuracy of the map and its information or its fitness for use. Any user of this map produced outside the work of the City of Harbor Heights, and assumes all responsibility for its use, and further agrees to hold the City of Harbor Heights harmless for any damages, including those that may be caused by the use of this map.

**CITY OF HARKER HEIGHTS
WATER LINE EXTENSIONS FROM MODOC DRIVE TO HOSPITAL SITE
21-Sep-10**

| | <u>ITEM</u> | <u>QUANTITY</u> | <u>UNIT</u> | <u>UNIT PRICE</u> | <u>TOTAL</u> |
|-----|---|-----------------|-------------|-------------------|-----------------|
| 1. | ROW Preparation | 1 | LS | \$2,000 | \$2,000 |
| 2. | 12 inch C-900 Waterline - Modoc to Property | 1,900 | LF | \$30 | \$57,000 |
| 3. | 12 inch C-900 Waterline - Lottie Ln. to Property | 550 | LF | \$30 | \$16,500 |
| 4. | Oversizing Internal Hospital Line to 12 inches (shown on map) | 1,500 | LF | \$10 | \$15,000 |
| 5. | Waterline Fittings | 2 | TON | \$4,500 | \$9,000 |
| 6. | 24 inch Bore Modoc | 44 | LF | \$250 | \$11,000 |
| 7. | 24 inch Bore Memory Lane | 44 | LF | \$250 | \$11,000 |
| 8. | Connection to existing 12 inch waterline | 1 | EACH | \$800 | \$800 |
| 9. | Connection to existing 8 inch waterline | 1 | EACH | \$2,500 | \$2,500 |
| 10. | Seeding and Topsoiling | 8,500 | SY | \$2 | \$17,000 |
| 11. | Mobilization and Bonds | 1 | LS | \$10,000 | <u>\$10,000</u> |
| | TOTAL CONSTRUCTION COST | | | | \$151,800 |
| | ENGINEERING AND INSPECTION | | | | \$24,000 |
| | SURVEYING | | | | <u>\$5,500</u> |
| | TOTAL PROJECT | | | | \$181,300 |

**CITY OF HARKER HEIGHTS
EXTENSION OF 8 INCH SANITARY SEWER TO HOSPITAL SITE
21-Sep-10**

| | <u>ITEM</u> | <u>QUANTITY</u> | <u>UNIT</u> | <u>UNIT PRICE</u> | <u>TOTAL</u> |
|----|--|-----------------|-------------|-------------------|----------------|
| 1. | Site Clearing and Preparation | 1 | LS | \$3,000 | \$3,000 |
| 2. | Install M.H. in Existing 8 inch Sanitary Sewer | 1 | EACH | \$3,000 | \$3,000 |
| 3. | 8 inch SDR-26 PVC SS | 1,230 | LF | \$20 | \$24,600 |
| 4. | Standard Manhole | 2 | EACH | \$2,000 | \$4,000 |
| 5. | Clean-out at Termination Point | 1 | EACH | \$600 | \$600 |
| 6. | Seeding of Easement | 2,800 | SY | \$0.60 | \$1,680 |
| 7. | Mobilization and Bonds | 1 | LS | \$4,000 | <u>\$4,000</u> |
| | TOTAL CONSTRUCTION COST | | | | \$40,880 |
| | ENGINEERING AND INSPECTION | | | | \$6,900 |
| | SURVEYING | | | | <u>\$5,000</u> |
| | TOTAL PROJECT | | | | \$52,780 |

**CITY OF HARKER HEIGHTS
EXTENSION OF 36 INCH STORM DRAINAGE CONDUIT TO HOSPITAL SITE
21-Sep-10**

| | <u>ITEM</u> | <u>QUANTITY</u> | <u>UNIT</u> | <u>UNIT PRICE</u> | <u>TOTAL</u> |
|----|---------------------------------|-----------------|-------------|-------------------|----------------|
| 1. | Site Preparation | 1 | LS | \$2,500 | \$2,500 |
| 2. | 36 inch RCP Storm Drain Conduit | 1,250 | LF | \$50 | \$62,500 |
| 3. | Type B Headwall | 1 | LS | \$3,000 | \$3,000 |
| 4. | Junction Box | 1 | LS | \$3,000 | \$3,000 |
| 5. | Mobilization and Bonds | 1 | LS | \$3,000 | <u>\$3,000</u> |
| | TOTAL CONSTRUCTION COST | | | | \$74,000 |
| | ENGINEERING | | | | \$12,000 |
| | SURVEYING | | | | <u>\$2,000</u> |
| | TOTAL PROJECT | | | | \$88,000 |

EXHIBIT A

LEGAL DESCRIPTION

Tract 1: Lot 1, Block 1, Savannah Commercial Addition, an addition to the City of Harker Heights, Texas, as recorded in Cabinet D, Slide 96-D of the Plat Records of Bell County, Texas.

Tract 2: 2.150 acres of land, more or less, out of the ROBERT CUNNINGHAM Survey, Abstract 158, Bell County, Texas, and being more particularly described by metes and bounds in field notes attached as Exhibit "A" to a Warranty Deed dated January 10, 2006, from Cleo Glen, Ltd. to W&B Development, Ltd., such Warranty Deed being filed for record at Volume 5941, Page 405, Official Public Records of Bell County, Texas

**FIELD NOTES
BELL COUNTY, TEXAS**

Being all that certain tract or parcel of land situated in and being out of the Robert Cunningham Survey, A-158, Bell County, Texas, being all of the called 2.153 acre tract described in deed to Cleo Bay in Volume 1931, Page 581, Deed Records, Bell County, Texas, and all of the of the called 2.153 acre tract described in deed to Cleo Glenn Ltd in Volume 4123, Page 540, Deed Records, Bell County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch iron rod found in the south margin of U.S. Highway 190 (Central Texas Expressway) for the northwest corner of the called 17.290 acre tract described in deed to Waldon Whittis, Nancy M. Whittis, Bruce Whittis, and Sarah Gael Whittis, in Volume 4154, Page 595, Deed Records, Bell County, Texas, also being the northeast corner of said 2.153 acre tract and the northwest corner of the herein described tract;

THENCE S 21°09'01"E, 1539.21 feet along the west line of said 17.92 acre tract, west line of the called 45.189 acre tract described in deed to Waldon Whittis and Bruce Whittis in Volume 4493, Page 318, Deed Records, Bell County, Texas, west line of Savannah Heights, an addition to the City of Harker Heights, Texas, of record in Cabinet D, Slides 25-D, 26-A & B, Plat Records, Bell County, Texas, to a 3/8" iron rod found at a fence corner post found for the northeast corner of a called 50.00 Cleo Glenn Ltd in Volume 4123, Page 540, Deed Records, Bell County, Texas, also being the northeast corner of the called 122.323 acre tract described in deed to Cleo Bay and Glennys Bay in Volume 1721, Page 889, Deed Records, Bell County, Texas, same being the southeast corner of the herein described tract;

THENCE S 69°39'23"W, 59.95 feet along the south line of said 2.153 acre tract, north line of said 50.00 acre tract, north line of said 122.323 acre tract, and south line of this to a 3/8" iron rod found at a fence corner post found for the southeast corner of Rosewood Addition, and addition to the City of Killeen, Texas, of record in Cabinet C, Slide 92-C, Plat Records, Bell County, Texas, and being the southwest corner of the herein described tract;

THENCE N 21°08'18"W, 1586.79 feet along the east line of said Rosewood Addition, west line of said 2.153 acre tract to and west line of this to a 3/8" iron rod found at a fence corner found in the south margin of U.S. Highway 190, same being the northeast corner of said Rosewood Addition and the northwest corner of the herein described tract;

THENCE S 72°04'00"E, 76.79 feet along the south margin of U.S. Highway to the PLACE OF BEGINNING and containing 2.150 acres of land, more or less.

SURVEYORS' NOTES:

The bearing noted herein are based on true north established by global positioning satellite observations.

GUARANTY

Date: December 14, 2010

Guarantor: LHP Hospital Group, Inc., a Delaware corporation

Guarantor's Mailing Address: Attn.: General Counsel, 2800 North Dallas Parkway, Suite 200,
Plano, Collin Co., TX 75093

Hospital: HH/Killeen Health System, LLC

Hospital's Mailing Address: Attn.: Executive Vice President of Administration, 2800 North
Dallas Parkway, Suite 200, Plano, Collin Co., TX 75093

City: City of Harker Heights, a municipal corporation

City's Mailing Address: Attn.: City Manager, P.O. Box 2518, Harker Heights, Bell Co., TX
76548

Guaranteed Indebtedness: The contingent obligation relating to repayment of Ad Valorem Tax refunds as described in Paragraph 5(d) of the Economic Development Incentive Agreement dated December 14, 2010 (the "Agreement"), between City and Hospital, plus any reasonable actual out-of-pocket expenses incurred by City in connection with collecting such obligation.

1. It is expressly agreed and understood by and among Hospital, City and Guarantor that the execution and delivery to City of this Guaranty is a condition precedent to City entering into the Agreement, that City is relying on this Guaranty in granting the Incentives described therein to Hospital, and that City would not offer such incentives to Hospital without this Guaranty.

2. Guarantor agrees to make the full and prompt payment, when due or declared due, of the Guaranteed Indebtedness to City at City's Mailing Address. All sums payable under this Guaranty shall be paid in immediately available funds, without offset, in lawful money of the United States of America, which shall at the time of payment be legal tender for the payment of public and private debts. Payments by check or draft shall not constitute payment in immediately available funds until the required amount is actually received by City in full.

3. This Guaranty will continue in effect until all the Guaranteed Indebtedness is fully and finally paid, satisfied and discharged.

4. Guarantor covenants and agrees with City that Guarantor shall at all times throughout the term of this Guaranty maintain a minimum Net Worth (hereinafter defined) of at least \$5,000,000.00. The failure of Guarantor to maintain such minimum Net Worth shall constitute a default hereunder and under the Agreement. For purposes of this paragraph, "Net Worth" shall

mean (i) the sum of the aggregate total assets of Guarantor based on fair market value less normal depreciation, excluding, however, all assets that would be classified as intangible assets under generally accepted accounting principles, such as goodwill, patents, licenses, trademarks, trade names, copyrights and franchises, less (ii) all liabilities of Guarantor (including liabilities for taxes and other contingent and indirect liabilities), all calculated in accordance with generally accepted accounting principles applied on a consistent basis as set forth in Opinions of the Accounting Principles Board of the American Institute of Certified Public Accountants.

5. As long as the Guaranteed Indebtedness or any part thereof is outstanding and not paid, performed or satisfied in full, Guarantor shall furnish or cause to be furnished to City the following:

- (a) not later than 150 days after the end of each calendar year, financial statements, which shall mean and include a balance sheet, a statement of cash flow and an income statement as are prepared by Guarantor in the ordinary course of business and similar to those financial statements provided to City in connection with the execution of this Guaranty, setting forth the financial condition (including all contingent liabilities), cash flow and the income and expenses for Guarantor for the immediately preceding year, prepared in accordance with generally accepted accounting principles consistently applied, and audited and certified to by a nationally recognized independent certified public accountant registered and in good standing with the Public Company Accounting Oversight Board (the "PCAOB") created pursuant to the Sarbanes-Oxley Act, for the calendar year financial statements;
- (b) within fifteen (15) days after the filing of same, a tax return for each fiscal year of Guarantor from and after the date hereof; and
- (c) not later than 150 days after the end of each calendar year, a certificate by Guarantor in form reasonably acceptable to City certifying that, as of the date thereof, Guarantor is in compliance with the financial covenant set forth in paragraph 4 hereof, which certificate shall also include a statement as to the Net Worth of Guarantor as of the date of such certificate, together with all other financial information City may reasonably require to confirm the accuracy of such certificate, so long as such information is generated and prepared in the ordinary course of Guarantor's business and is directly related to the determination of the Net Worth of Guarantor.

6. Guarantor will give City prompt written notice of any event or condition that will or may reasonably be expected to have a material adverse effect on Guarantor's ability to satisfy and perform its obligations hereunder, including without limitation the financial covenant set forth in paragraph 4 hereof.

7. Guarantor waives (a) diligence in preserving liability of any person on the Guaranteed Indebtedness and in collecting or bringing suit to collect the Guaranteed Indebtedness; (b) all rights of Guarantor under chapter 34 of the Texas Business and Commerce Code, and rule 31 of the Texas Rules of Civil Procedure, and section 17.001 of the Texas Civil Practice and Remedies Code; (c) protest; (d) notice of extensions, increases, renewals, or rearrangements of the

Guaranteed Indebtedness; and (e) notice of acceptance of this guaranty, of creation of the Guaranteed Indebtedness, of failure to pay the Guaranteed Indebtedness as it matures, of any other default, of adverse change in Hospital's financial condition, of intent to accelerate, of acceleration, and every other notice of every kind. Guarantor's obligations under this guaranty will not be altered nor will City be liable to Guarantor because of any action or inaction of City in regard to a matter waived or of which notice is waived by Guarantor in the preceding sentence.

8. Guarantor agrees to pay reasonable attorney's fees and other collection costs if this guaranty is placed in the hands of an attorney for collection. If any party retains an attorney to enforce this guaranty, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

9. This guaranty is an absolute, irrevocable, unconditional, and continuing guaranty of payment and performance and not of collection.

10. City need not resort to Hospital or any other person before pursuing its rights against Guarantor or any other guarantor. City's action or inaction with respect to any right of City under the law or any agreement will not alter the obligation of Guarantor hereunder. City may pursue any remedy against Hospital or under any other guaranty without altering the obligations of Guarantor hereunder and without liability to Guarantor, even though City's pursuit of such remedy may result in Guarantor's loss of rights of subrogation or to proceed against others for reimbursement of contribution or any other right.

11. Guarantor will remain liable for the Guaranteed Indebtedness even though the Guaranteed Indebtedness may be unenforceable against or uncollectible from Hospital or any other person because of incapacity, lack of power or authority, discharge, invalidity, illegality, or any other reason.

12. Guarantor consents and acknowledges that Guarantor's obligations will not be released by (a) the renewal, extension, or modification of the Guaranteed Indebtedness or the Agreement; or (b) the insolvency, bankruptcy, liquidation, or dissolution of Hospital or any other obligor.

13. It is the intention of the parties that the amount of the Guaranteed Indebtedness should be determined without regard to any rule of law or order which may relieve Hospital of any portion of the Guaranteed Indebtedness. Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay City, or allow the claim of City in respect of, any such interest accruing after the date on which such proceeding is commenced. In the event that all or any portion of the Guaranteed Indebtedness or the obligations is paid or performed by Hospital, the obligations of Guarantor hereunder shall continue and remain in full force and effect in the event that all or any part of such payment(s) or performance(s) is avoided or recovered directly or indirectly from City as a preference, fraudulent transfer or otherwise in such proceeding.

14. City need not notify Guarantor that City has sued Hospital, but if City gives written notice to Guarantor that it has sued Hospital, Guarantor will be bound by any judgment or decree, to the extent permitted by law.

15. City may sue any Guarantor without impairing City's rights against any other Guarantor, with or without making Hospital a party. City may settle with Hospital or any other guarantor for such amounts as it may elect or may release Hospital or any guarantor without impairing City's right to collect the Guaranteed Indebtedness from Guarantor.

16. Guarantor warrants and represents to City that (a) Guarantor is the owner of a direct or indirect interest in Hospital, and the value of the consideration and benefit received and to be received by Guarantor as a result of City granting the Incentives described in the Agreement to Hospital is reasonably expected to benefit Guarantor, directly or indirectly; (b) this Guaranty is duly authorized and valid, and is binding upon and enforceable against Guarantor; (c) Guarantor is not, and the execution, delivery and performance by Guarantor of this Guaranty will not cause Guarantor to be, in violation of any law or in breach of or in default (or at risk of acceleration of indebtedness) under any contract, agreement or restriction by which Guarantor is bound or affected; (d) Guarantor is duly organized, validly existing, and in good standing under the laws of the state of its organization, and is lawfully doing business in Texas, and has full power and authority to enter into and perform this Guaranty; (e) to the best of Guarantor's knowledge, all financial statements and information heretofore furnished to City by Guarantor do, and all financial statements and information hereafter furnished to City by Guarantor will, fully and accurately present the condition (financial or otherwise) of Guarantor as of their dates; (f) no bankruptcy or insolvency proceedings are pending or contemplated by or against Guarantor; and, (g) after giving effect to this Guaranty, Guarantor is solvent, is not engaged or about to engage in business or a transaction for which Guarantor lacks sufficient capital, and has not incurred and will not incur debts that will be beyond Guarantor's ability to pay as such debts mature.

17. Each party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this Guaranty and all transactions contemplated by this Guaranty.

18. GUARANTOR HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS GUARANTY, THE AGREEMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY GUARANTOR, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. CITY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY GUARANTOR.

19. GUARANTOR WILL INDEMNIFY, DEFEND AND HOLD CITY HARMLESS FROM AND AGAINST ANY LOSS, COST OR EXPENSE INCURRED OR ARISING AS A RESULT OF ANY REPRESENTATION, WARRANTY OR COVENANT OF GUARANTOR BEING FALSE, INCORRECT, INCOMPLETE OR MISLEADING IN ANY MATERIAL RESPECT.

20. This Guaranty binds Guarantor and Guarantor's heirs, successors, and assigns, and it benefits and may be enforced by City and City's successors in interest. When the context requires, singular nouns and pronouns include the plural. This Guaranty will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. The provisions of this Guaranty are severable. If a court of competent jurisdiction finds that any provision of this Guaranty is unenforceable, then the remaining provisions will remain in effect without the unenforceable parts.

21. Rebecca Hurley has executed this Guaranty solely in his/her capacity as Executive Vice President of Guarantor, and not in his individual capacity, and shall have no personal liability under or in connection with this Guaranty or any matter referred to herein.

22. FINAL AGREEMENT: THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

LHP Hospital Group, Inc.

By: 

Rebecca Hurley, Executive Vice President