



41 Perimeter Center East, Suite 250  
Dunwoody, Georgia 30346  
P (678) 382-6700 F (678) 382-6701  
dunwoodyga.gov

## **MEMORANDUM**

**To:** Mayor and City Council

**From:** Warren Hutmacher, City Manager

**Date:** September 9, 2013

**Subject:** **Project Renaissance – Purchase of Final Parcel (Tract C) of the 19 acre former Emory Dunwoody Hospital site**

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### **ITEM DESCRIPTION**

Staff has completed all necessary due diligence activities for the purchase of the final parcel "Tract C" of the 19 acre (former Emory Dunwoody Hospital site) property. Authorizing the purchase of the 5.5897 acre "Tract C" in September, as opposed to waiting until August 2014, the City will save \$59,159.00 in interest.

### **BACKGROUND**

In August 2011, the City Council authorized the City Manager to execute a sales contract with American Medicorp Development Company (subsidiary of HCA) for the purchase of a 19.14 acre property formerly known as the Dunwoody Emory Hospital site along North Shallowford and Pernoshal Roads.

This property is being purchased as part of Project Renaissance, a redevelopment initiative focused on a 35-acre area in Georgetown, in accordance with the Georgetown/North Shallowford Master Plan and the Urban Redevelopment Plan.

In March 2012, the City Council authorized the City Manager to execute a modification to the sales contract referenced above that effectively divided the transaction into three parts. The City purchased Tracts A1 and B in June 2012, purchased Tract A2 in November 2012, and has an exclusive option on Tract C through 2014 (see attached map, outlined in green). The \$50,000 the City paid for the Option Agreement, described in the Contract as the "Option Money," will be used as a credit towards the purchase price for Tract C.

As part of the Project Renaissance redevelopment, roughly 5 acres of Tract C will be redeveloped into an open-field park with a pavilion, bathroom building, parking, and a multi-use trail which will traverse across the full 19 acre property as well as connecting to the 16 acre property and up Nancy Creek to Brook Run Park's multi-use trail.

### **COMPLETED DUE DILLIGENCE ACTIVITIES**

Staff has previously completed most of the necessary due diligence work to finalize the purchase of this property. The survey, appraisals, and environmental assessment were presented at the November 2011 City Council Meeting and are summarized below.

#### **1. SURVEY**

An ALTA survey (a survey prepared by the standards of the American Land Title Association and the American Congress on Surveying and Mapping) was completed which shows easements, rights-of-way, locations of all improvements on the land



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(observable utilities, roads, driveways, etc.), and other factors influencing the ownership of land. Additionally, the ALTA Survey provides the title company with the information needed to insure the title to the land. Staff has received an ALTA survey for this property, which was prepared by TerraMark, and there are no issues of concern related to the survey.

## **2. APPRAISALS**

Two independent MAI (Member of the Appraisal Institute) appraisals of the full 19 acre property were completed in accordance with City purchasing rules. The results are as follows:

1. Alex Rubin and Company. (Georgia Certified General Real Property Appraiser) determined the Market Value "As Is" of the fee simple interest of the full 19 acre subject property, based on market conditions as of November 7, 2011, is six million four hundred forty thousand dollars (\$6,440,000). This appraisal is above our total purchase price of \$5,666,831.
2. Weibel and Associates, Inc. (Georgia Certified General Real Property Appraiser) determined the Market Value "As Is" of the fee simple interest of the full 19 acre subject property, based on market conditions as of November 1, 2011, is eight million dollars (\$8,000,000). This appraisal is above our total purchase price of \$5,666,831.

The variance between the two appraisals is 19.5%. The City's purchasing policy requires two appraisals if the purchase price is above \$500,000 and either the variance between the two appraisals is less than 20% or both appraisals regardless of variance are above the purchase price. Since both appraisals are above the purchase price, a third appraisal was not required.

The average of the two appraisals is \$7,220,000. This is \$1,553,169 more than the total purchase price. It is reasonable to conclude that the appraisals clearly justify the purchase price for this property.

This purchase price does not include the reimbursement of demolition costs. The City purchased the property after the hospital was removed. The cost to demolish the hospital (\$600,000) was reimbursed to the property owner by the City at the first closing. This cost is not included in calculating the cost of the land.

## **3. ENVIRONMENTAL ASSESSMENT**

The Phase I Environmental Site Assessment was performed in general accordance with American Society for Testing Materials (ASTM) Standard Practice for Site Assessments. The assessment includes an involved and detailed site visit by a qualified professional. A Phase I Environmental Site Assessment conducted by Rindt-McDuff Associates revealed no evidence of Recognized Environmental Conditions. There are no issues of concern related to the environmental assessment.

## **4. TITLE REVIEW**

The City engaged Alison Woodrow, Esq., a commercial real estate attorney with FSB Fisher Broyles, a Limited Liability Partnership, to represent the City in this transaction. Ms. Woodrow has reviewed all of the title work related to the full 19 acre property and found no significant issues of concern related to the title review.



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The City is contracting with First American Title Insurance Company to purchase appropriate title insurance for the property upon the consummation of the closing of this transaction.

## **FUNDING**

The City must give the Seller 30-days' notice prior to closing on Tract C. The purchase price assigned to Tract C, if completed between October 1 and October 31, 2013, is \$1,995,801 (less the \$50,000 credit for the "Option Money"). Authorizing the purchase of the 5.5897 acre "Tract C" now, as opposed to waiting until August 2014, the City will save \$59,159.00 in interest.

Since the 2013 HOST funds came in stronger than budgeted, sufficient funds for this purchase can be allotted from 2013 HOST funds. Staff recommends including this allocation as part of the 2013 Budget Amendment which will be discussed at the October 14, 2013 Council Work Session and considered at the October 28, 2013 Council Meeting.







## **RECOMMENDATION**

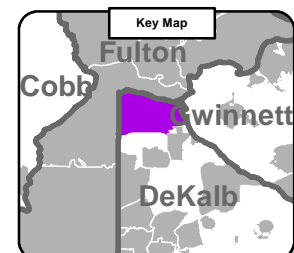
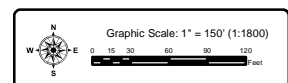
Staff recommends the City Council authorize the City Manager to finalize and close on Tract C consisting of 5.5897 acres of land located on the former Emory Dunwoody Hospital site at 4575 North Shallowford Road. Staff will work with legal counsel to prepare a Resolution for the September 23, 2013 Meeting and a Budget Amendment for the October Council Meetings.

### Site Location

## 19 Acre Hospital Site Proposal

Legend

-  A1 - 4.825 Ac.
-  A2 - 5.336 ac.
-  B - 3.298 Ac
-  C - 5.647 ac.
-  Tax Parcels
-  Nancy Creek



Map Edition:

Map Publication Date:

Map Sheet:

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Legal Notifications:

1. This map is the property of the City of Dunwoody, Georgia. The use of this map is granted solely upon the condition that the map will not be sold, copied, or printed for resale without the express written permission of the City. This map is a proprietary product of the City of Dunwoody. In no event will the City and/or its GISMapping Consultants be liable for damages arising from the use of or inability to use this map.

2. This map is a graphical representation of data obtained from a variety of sources such as aerial photography, recorded deeds, plats, engineering drawings and other public records of data. The City of Dunwoody does not warrant the accuracy or currency of the map provided and does not guarantee the suitability of the map for any purpose, expressed or implied.

3. ALL DATA IS PROVIDED "AS IS, WITHOUT FAULTS, WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

4. This map is not intended to depict boundary line discrepancies, lines of possession, or any other matters that a true and accurate land survey of the premises would disclose.

5. County, municipal, land lot and easement boundaries are approximate. It is the responsibility of the map user to verify boundaries with the appropriate governmental office.

**Production Notes:**

1. This map was compiled from records that have been filed with DeKalb County and/or the City by various parties. Neither the City nor its GIS Mapping consultants prepared said records or make any representations or assume any responsibilities for the accuracy of the information contained in this map.

2. The compilation methods employed during the production of this map include, but are not limited to, the following cadastral mapping processes: plat and/or deed research, coordinate geometry, traditional and GPS field surveys and orthophoto rectification.

**Aerial Imagery Notes:**

1. Orthophoto imagery was created using aerial photography taken February 2010. The unprocessed imagery contains some degree of error in geometry (geometric distortion) and in the measured brightness of the pixels (radiometric distortion). Image rectification and restoration algorithms are applied during image processing to reduce the distortions and degradations that result from the original image acquisition. However, not all of the potential distortions and/or degradations will be corrected during this process. Therefore, exact interpretation of the map image features will require field verification by the map user.

Map Reference System Notes:

1. Horizontal coordinates are referenced to the Georgia West Zone State Plane Coordinate System relative to the North American Datum of 1983 (NAD83).
2. Vertical coordinates are referenced to the North American Vertical Datum of 1988 (NAV88).

Revisions:

1. This map will be revised periodically by the City of Dunwoody. Should the user find conditions other than as shown, the City would appreciate your input. Simply copy the area in question, add your proposed revision and/or correction, and send the information to the City.

2. Updated sheet border with new City logo/tagline. (December 2010)

#M.8.

*Final*

## CONTRACT FOR PURCHASE AND SALE (Hospital)

**THIS CONTRACT** is made and entered into as of the "Contract Date" (as defined in Section 22) by and between Atlanta Healthcare Management, L.P. and American Medicorp Development Company (together, the "Seller") and the City of Dunwoody, Georgia (the "Purchaser").

In consideration of the mutual covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### 1. CONTRACT TO BUY AND SELL

Seller hereby agrees to sell and Purchaser hereby agrees to purchase all that certain: approximately 19.08-acre tract of land, which is more particularly described in Exhibit "A" attached hereto and made a part hereof by reference lying and being in Dunwoody, DeKalb County, Georgia (the "Land"), together with (i) (A) all rights and interests appurtenant thereto and (B) all access, air, water, riparian, development, utility and solar rights related thereto (the "Appurtenant Rights"), (ii) all improvements located on the Land, together with any and all fixtures of any kind owned by Seller and attached to or used in connection with the ownership, maintenance, or operation of the Land or improvements located thereon (the "Improvements") (the Land, the Appurtenant Rights and the Improvements are referred to collectively as the "Real Property"); (iii) the lessor's interest in that certain Ground Lease dated as of November 15, 1977, a short form of which is recorded in Deed Book 4290, Page 20 with P&S Associates, as lessee and related agreements (together, the "P&S Ground Lease"); and (iv) to the extent assignable and elected to be assumed by Purchaser pursuant to Section 5(d) hereinafter, all of Seller's rights, title and interest in and to all "Service Contracts" (as defined in Exhibit C to this Contract), permits, licenses, certificates of occupancy, warranties, architectural or engineering plans and specifications, and governmental approvals which relate to the Real Property, the Improvements or the Land (hereinafter collectively referred to as the "General Intangibles"). The Real Property and the General Intangibles are herein collectively called the "Property".

### 2. EARNEST MONEY

(a) Within three (3) business days after the Contract Date, Purchaser will deposit with First American Title Insurance Company, National Commercial Services, 6077 Primacy Parkway, Suite 121, Memphis, TN 38119, Attn: Ms. Carol Slone (the "Escrow Agent"), the cash sum of One Hundred Thousand and No/100 (\$100,000.00) Dollars as earnest money (together with any interest earned thereon) to be held and applied to the Purchase Price in accordance with the provisions hereof. All Earnest Money shall become non-refundable, absent Seller's default and except as provided in Sections 4, 7 and 20, upon the expiration of the

“Inspection Period” defined in Section 5 if Purchaser does not terminate this Contract before the expiration of such “Inspection Period.” All interest and other income that accrues on the Earnest Money shall belong to the party to whom the Earnest Money is to be disbursed and shall be disbursed to such party in accordance with this Contract.

(b) Purchaser shall make an additional deposit of Earnest Money in the amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00) if the Closing has not occurred on or before March 30, 2012 as set forth in Section 6 of this Contract.

### **3. PURCHASE PRICE**

The purchase price for the Property shall be Five Million Five Hundred Thirty-Two Thousand and No/100 Dollars (\$5,532,000.00). The balance of the Purchase Price shall be paid in full at the Closing by wire transfer of immediately available funds to an account designated by Seller. Purchaser shall also pay to Seller at the Closing an additional sum equal to the actual cost that Seller has incurred in demolishing certain improvements on a portion of the Land on which the former hospital was located, consisting of approximately 14.26 acres, prior to the Contract Date, up to a maximum of Six Hundred Thousand and No/100 Dollars (\$600,000.00). This reimbursement amount will be shown on the settlement statement (described in Section 6 of this Contract) as a separate line item. Seller will provide reasonable documentation of such costs to Purchaser before the Closing.

### **4. TITLE AND SURVEY**

(a) At the Closing, Seller shall convey to Purchaser good and transferable fee simple title to the Property by Limited Warranty Deed (the “Deed”), subject only to the “Permitted Exceptions” (as defined in Section 6(b)(i) of this Contract).

(b) Purchaser may, at its own sole cost and expense, obtain a survey of the Property during the Inspection Period (the “Survey”). If Purchaser decides to do so, Purchaser shall deliver to Seller a full size copy of the Survey.

(c) Purchaser shall obtain a commitment for an Owner’s Policy of Title Insurance (the “Title Commitment”) issued by First American Title Insurance Company, National Commercial Services (the “Title Company”), pursuant to which the Title Company shall commit to issue to Purchaser a standard owner’s policy of title insurance in the amount of the Purchase Price. The Title Company shall also promptly deliver a copy of the Title Commitment and related documents to Seller. If Purchaser objects to any matter shown on the Title Commitment or the Survey, then Purchaser may notify Seller in writing of such objections (the “Objections”) before the

date that is thirty (30) days after the Contract Date (the "Title Objection Deadline"). Any matters not objected to prior to the Title Objection Deadline shall be deemed waived by Purchaser. Within ten (10) business days of receipt from Purchaser of any such Objections, Seller shall notify Purchaser as to whether Seller shall cure such Objections. In such event, Seller may, at its sole election, (i) undertake with due diligence such actions necessary to eliminate or otherwise remedy the Objections to Purchaser's reasonable satisfaction on or before the Closing, at Seller's expense, or (ii) if Seller determines that it is either unable or unwilling to remedy any such Objections, Seller may terminate this Contract by delivering written notice of such termination to the Purchaser within the ten (10) business day period unless Purchaser shall deliver a written waiver of all Objections that Seller is unable or unwilling to cure as provided above; it being understood that Seller shall have no obligation to eliminate or otherwise remove any Objection. Purchaser shall have the right to terminate this Contract by giving written notice to Seller within five (5) business days after receipt of Seller's written notice. If this Contract is terminated pursuant to this Section 4, Seller shall cause the Title Company to return the Earnest Money to Purchaser and no party hereunder shall have any further rights or obligations under this Contract other than those rights and obligations that are expressly stated to survive termination. After the Title Objection Deadline, Purchaser shall have no further right to object to any item, exception or other matter shown on any of the foregoing, unless such matter first arises after the last day of the Inspection Period (as hereinafter defined in Section 5) in which case Purchaser shall have the same right to object to such matters as it had after having been given the opportunity to review the initial Title Commitment. Notwithstanding anything to the contrary herein contained, Seller covenants and agrees that at or prior to Closing, Seller, at Seller's sole cost and expense, shall (i) cause to be released or insured over all mechanics' and contractors' liens which encumber the Property; (ii) pay in full all past due and delinquent ad valorem taxes and assessments of any kind constituting a lien against the Property; and (iii) cause to be released any loan security documents which encumber the Property under which Seller is the debtor.

## 5. INSPECTION

(a) Commencing upon the Contract Date and during the life of this Contract, Purchaser shall have the right to go on the Property personally or through agents, employees and contractors for the purpose of making soil tests and such other tests, analyses and investigations of the Property as Purchaser deems necessary. Purchaser shall pay all costs incurred in making such tests, analyses and investigations. Purchaser shall repair any damage to the Property occurring as a result of any of the foregoing if this Contract is terminated pursuant to the terms of this Contract and Purchaser shall indemnify and hold Seller harmless from and against any losses, claims, damages, liabilities, penalties, costs and expenses (including, but not limited to, reasonable attorneys' fees and expenses) arising or resulting from any entry upon the Property by Purchaser or Purchaser's

representatives, contractors, agents or employees. Purchaser's obligations and liabilities under this Section 5 shall survive the expiration or termination of this Contract. Purchaser must notify Seller in writing by 5:00 p.m. Eastern Time on December 23, 2011 (the "Inspection Period") of Purchaser's intent to terminate this Contract for any reason or no reason at all, and if so notified, this Contract shall become null and void, except as otherwise provided in this Contract, and the Earnest Money shall be immediately refunded to the Purchaser. All Earnest Money shall become non-refundable at the expiration of the Inspection Period except as otherwise expressly provided in this Contract.

(b) No later than five (5) business days after the Contract Date, Seller shall deliver to Purchaser the items listed on Exhibit C attached hereto ("Seller's Deliveries"). Purchaser shall keep the information set forth in Seller's Deliveries confidential to the fullest extent permitted by law. If the transactions contemplated in this Contract are not consummated for any reason whatsoever, Purchaser shall return Seller's Deliveries and all copies thereto to Seller immediately.

(c) The sum of One Hundred Dollars (\$100.00) (the "Independent Consideration") out of the Earnest Money is independent of any other consideration provided hereunder, shall be fully earned by Seller upon the Contract Date and is not refundable to Purchaser under any circumstances. Accordingly, if this Contract is terminated for any reason by either party, the Independent Consideration shall be paid by the Title Company to Seller.

(d) Purchaser shall have until the expiration of the Inspection Period to inform Seller in writing which, if any, of the Service Contracts listed in Exhibit D attached hereto Purchaser shall assume at the Closing. Purchaser's failure to notify Seller in writing of its election to assume any Service Contract before the Inspection Period expires shall be deemed a decision by Purchaser to reject such Service Contract (the "Assumed Services Contract"). Seller shall be responsible for any and all fees, charges or expenses incurred as a result of the cancellation of any Service Contracts that Purchaser elects to reject.

## 6. CLOSING

(a) Purchaser and Seller shall consummate and close the sale contemplated by this Contract (the "Closing") at the offices of the Title Company/Escrow Agent on March 30, 2012 or upon such earlier date as the parties may agree (the "Closing Date"), as mutually agreed upon by both parties; provided, however, that the Closing may be conducted by mail in escrow. Notwithstanding the foregoing, however, Purchaser shall have the right to extend the Closing until July 31, 2012, by giving written notice to Seller and the Title Company by 5:00 pm Eastern Time on March 23, 2012. Simultaneously with such notice, Purchaser will



make the additional deposit of \$500,000.00 as non-refundable Earnest Money as described in Section 2(b) of this Contract. If the Closing has not occurred on or before July 31, 2012, absent a Seller default or event of *force majeure*, this Contract shall automatically terminate. In the event of such termination, the Escrow Agent will promptly pay all Earnest Money to Seller and the parties will be released of all obligations and liabilities under this Contract except as provided otherwise in this Contract.

(b) Seller's Deliveries in Escrow. At the Closing, Seller shall deliver to the Title Company the following documents:

- (i) Deed. The Deed, which will be executed by Seller and convey to Purchaser title to the Real Property that is insurable by the Title Company free and clear of all liens, restrictions and encumbrances except the "Permitted Exceptions," which shall mean those exceptions approved or waived by Purchaser pursuant to Section 4 and the following (1) ad valorem real estate taxes and installments of governmental assessments for public improvements benefiting the Real Property, that are not delinquent; (2) zoning and building laws, ordinances, resolutions, and regulations; (3) covenants, agreements, conditions, restrictions, reservations and other matters of record (subject, however, to Purchaser's rights under Section 4(c) to make Objections); and (4) all matters that would be shown on an accurate survey of the Property.
- (ii) Bill of Sale, General Assignment and Assumption Agreement. A bill of sale, general assignment and assumption agreement (the "Assignment"), without warranty of any kind regarding the property or property interests transferred, conveying to Purchaser, ownership in all of the Improvements, including all fixtures located on the Property, as well as, to the extent assignable, all General Intangibles and the Assumed Service Contracts.
- (iii) P&S Ground Lease Assignment and Assumption Agreement. An assignment and assumption agreement (the "P&S Ground Lease Assignment"), without warranty, conveying to Purchaser all of lessor's obligations and interest under the P&S Ground Lease.
- (iv) Authority. Evidence of existence, organization, and authority of Seller and the authority of the person executing documents on behalf of Seller, reasonably satisfactory to the Title Company.

- (v) FIRPTA. A Foreign Investment in Real Property Tax Act affidavit executed by Seller. If Seller fails to provide the necessary affidavit and/or documentation of exemption on the Closing Date, Purchaser may proceed with withholding provisions as provided by law.
- (vi) Seller's Affidavit. A seller's affidavit or similar certification, consistent with a limited warranty deed, as may be required by the Title Company to issue the title policy, and such other instruments and documents, such as lien waivers and mechanics lien indemnities, as the Title Company shall reasonably require, that are consistent with a limited warranty deed in order to issue its owner's title policy insuring Purchaser's fee simple title to the Property free and clear of the "standard printed exceptions".
- (vii) Additional Documents. A settlement statement and any additional documents that Purchaser or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Contract.
- (viii) Georgia Withholding Tax Affidavit. An Affidavit of Seller's Residence which demonstrates that Seller is exempt from the withholding requirements of O.C.G.A. Section 48-7-128.
- (ix) Broker's Lien Waiver Affidavit. A Broker's Lien Waiver Affidavit executed by each Broker.
- (x) Closing Statement. A closing statement duly executed by Seller setting forth in reasonable detail the financial transaction contemplated by this Contract, including without limitation the Purchase Price, all prorations, the allocation of costs specified herein, and the source, application and disbursement of all funds (the "Closing Statement").
- (c) Purchaser's Deliveries in Escrow. At the Closing, Purchaser shall deliver to the Title Company the following:
  - (i) Purchase Price. The Purchase Price, plus or minus applicable prorations and less a credit for the full amount of the Earnest Money or any other credits contemplated by this Contract, deposited by Purchaser with the Title Company in immediate, same-day federal funds (all or any part of which may be the proceeds of a loan) wired for credit into such account as the Title Company may designate.

- (ii) Assignment and Assumption. The Assignment and the P&S Ground Lease Assignment.
- (iii) Additional Documents. A settlement statement and any additional documents that Seller or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Contract.
- (iv) Closing Statement. The Closing Statement executed by Purchaser.

(d) Closing Costs. At Closing, Purchaser shall pay any transfer taxes and recording costs to be paid in connection with the conveyance of the Property to Purchaser. Purchaser shall also pay the cost of obtaining the Title Commitment, the premiums for any title insurance policy and the cost of the Survey. Any fees for the services of Escrow Agent shall be divided equally between Seller and Purchaser. Each party shall pay and be responsible for all fees and expenses of its respective attorneys and other representatives, excluding commissions or fees due to any real estate brokers which shall be paid as provided in Section 17 hereinafter.

(e) Prorations. As of the date of Closing, Purchaser and Seller shall prorate ad valorem taxes on the Property and all items of income, rent and expenses in connection with ownership, operation and maintenance of the Property, for the year in which the Closing occurs. All adjustments and prorations to the Purchase Price payable at Closing shall be computed as of the end of the day preceding the Closing Date, with the Seller being entitled to receive all revenues and shall be charged with all expenses relating to the ownership and operation of the Property through the day preceding the Closing Date. All other items which are customarily prorated in transactions similar to the transaction contemplated hereby, and which were not heretofore dealt with, will be prorated as of the end of the day preceding the Closing Date.

## 7. **CONDITION AND POSSESSION OF THE PROPERTY**

At Closing, Seller shall deliver to Purchaser possession of the Property in substantially the same condition as on the Contract Date, normal wear and tear excepted. If all or any material portion of the Property shall be condemned, damaged or destroyed prior to the Closing, Purchaser may elect to (i) terminate this Contract, or (ii) receive such insurance proceeds or condemnation award as may be paid or payable with respect to such condemnation, damage or destruction and complete the Closing. Purchaser's election under this paragraph shall be exercised by written notice to Seller within fifteen (15) days after receipt of written notice from Seller of such condemnation, damage or destruction or of written notice of the amount of the insurance or condemnation award payable with respect to such

condemnation, damage or destruction, whichever is later. If Purchaser elects to terminate this Contract under this Paragraph, all Earnest Money paid hereunder shall be immediately refunded to Purchaser.

## 8. DEFAULT

If the sale contemplated by this Contract is not consummated through default of Seller, Purchaser may, as its sole and exclusive remedy, either (a) receive the return of all of the Earnest Money, which return shall operate to terminate this Contract and release Purchaser and Seller from any and all liability hereunder, or (b) enforce specific performance of Seller's obligation to convey the Property to Purchaser in accordance with the terms of this Contract. If said sale is not consummated because of Purchaser's default, then Seller shall be entitled, as its sole and exclusive remedy, to terminate this Contract and retain the Earnest Money as liquidated damages. It is hereby agreed that Seller's damages will be difficult to ascertain and that the Earnest Money constitutes a reasonable liquidation thereof, and is not intended as a penalty, but as full liquidated damages.

## 9. NOTICE

(a) Any notice required or permitted to be given hereunder shall be sufficient if in writing and if hand delivered, delivered by nationally recognized overnight courier or sent by U.S. Certified Mail, postage prepaid and return receipt requested, to the party being given such notice at the following address:

Seller: American Mediacorp Development Company  
One Park Plaza  
Nashville, TN 37203  
Attn: Mr. Ron Woods,  
Real Estate Department  
E-mail: Ron.Woods@HCAhealthcare.com

With copies to: TMG Realty Advisors  
1201 Peachtree Street, NE  
Building 400, Suite 20  
Atlanta, GA 30361  
Attn: Mr. Tony Martin  
E-Mail: [tmartin@TMGrealtyadvisors.com](mailto:tmartin@TMGrealtyadvisors.com)

And  
Waller Lansden Dortch & Davis, LLP  
511 Union Street, Suite 2700  
Nashville, TN 37219  
Attn: Carla F. Fenswick, Esq.  
E-Mail: [Carla.Fenswick@wallerlaw.com](mailto:Carla.Fenswick@wallerlaw.com)

Purchaser:  
The City of Dunwoody, Georgia  
41 Perimeter Center East, Suite 250  
Dunwoody, GA 30346  
Attn: City Manager (with copies to City  
Attorney and City Clerk)  
E-Mail:  
[Warren.Hutmacher@dunwoodyga.gov](mailto:Warren.Hutmacher@dunwoodyga.gov)

With copy to:  
FSB FisherBroyles, a Limited Liability  
Partnership  
5023 Buckline Crossing  
Dunwoody, GA 30338  
Attn: Alison S. Woodrow, Esq.  
E-mail: [Woodrow@fsblegal.com](mailto:Woodrow@fsblegal.com)

(b) Any party may change said address by giving the other party hereto notice of such change of address. Notice given as hereinabove provided shall be deemed received by the party to whom it is addressed on the date on which said notice is hand delivered, delivered by overnight courier or deposited in a U.S. Post Office sent Certified Mail, return receipt requested with proper postage affixed hereto. Notice may also be delivered by e-mail to the addresses set forth above (or to any other address designated by the applicable by written notice to the other party); provided by each fax or e-mail delivery shall be followed promptly by delivery of such notice by one of the methods described in the first sentence of Section 9(a).

#### 10. ASSIGNMENT

Purchaser shall be entitled to assign its right, title and interest herein only with the prior written consent of Seller, such consent not to be unreasonably withheld or delayed. Notwithstanding the foregoing, Purchaser may assign this Contract without necessity of Seller's consent to an entity which is controlled by Purchaser; provided that Seller is notified of such assignment in writing, and Purchaser shall remain liable for all obligations of Purchaser under this Contract. Any approved assignee shall expressly assume all of Purchaser's duties, obligations and liabilities hereunder.

#### 11. SUCCESSORS AND ASSIGNS

This Contract shall bind and inure to the benefit of Seller and Purchaser and their respective successors and assigns. In no event, however, shall any assignment of Purchaser's rights under this Contract operate to release Purchaser from liability under this Contract.

**12. TIME OF ESSENCE**

Time is of essence of this Contract.

**13. SOLE CONTRACT**

This Contract constitutes the sole and entire agreement between the parties hereto with respect to the subject matter hereof, and no modification of this Contract shall be binding unless signed by all parties to this Contract. No representation, promise, or inducement not included in this Contract shall be binding upon any party hereto.

**14. POSSESSION**

Possession of the Property shall be granted by Seller to Purchaser at the time of Closing of this Contract.

**15. SELLER'S COVENANTS**

Seller agrees that during the period from the Contract Date through the Closing Date Seller will perform the following covenants:

(a) Except as Purchaser may otherwise consent in writing, until the Closing Date, unless this Contract is sooner terminated, Seller shall: (i) maintain the Property in its present condition and repair, ordinary wear and tear excepted and subject to the terms of Section 7(b) hereof; (ii) maintain the existing insurance policies for the Property and the operation thereof (and any replacements thereof) in full force and effect, (iii) not grant to any third party any interest in the Property or any part thereof or further voluntarily encumber the Property; provided, however, that this prohibition shall not apply to any back-up contract to sell the Property in the event that this Contract is terminated, (iv) not construct any improvements on, or make any material changes to, the Property and (v) not seek, consent to, or otherwise concur in any zoning variance or change without Purchaser's prior written consent.

(b) Seller will not, without the prior written consent of Purchaser, (i) enter into any operating contract that will not be fully performed by Seller on or before the Closing Date, or (ii) enter into any lease or easement for the Property.

(c) Prior to Closing, Seller will notify Purchaser of any notice received by Seller of any material change in or to the Property, promptly upon Seller's receipt thereof.

## 16. MISCELLANEOUS

(a) This Contract and said other instruments shall, in all respects, be governed, construed, applied and enforced in accordance with laws of the State of Georgia (as may be amended). All disputes will be filed with the Superior Court of DeKalb County, Georgia.

(b) This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Contract. To facilitate execution of this Contract, the parties may execute and exchange by telephone facsimile or e-mailed counterparts of the signature pages; provided, however, the Purchaser and Seller shall each receive from the other within ten (10) days of the Contract Date an original, fully executed Contract.

(c) Should either party employ attorneys to enforce any of the provisions hereof, the party losing in any final judgment agrees to pay the prevailing party all reasonable costs, charges and expenses, including reasonable attorneys' fees, expended or incurred in connection therewith.

(d) In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by Seller to Purchaser at the Closing, Seller agrees to perform, execute and/or deliver or cause to be delivered, executed and/or delivered, but without any obligation to incur any additional liability or expense, after the Closing any and all further acts, deeds and assurances as may be reasonably necessary to consummate the transactions contemplated hereby and/or to further perfect and deliver to Purchaser the conveyance, transfer and assignment of the Property and all rights related thereto.

(e) Except as otherwise provided herein, this Agreement may be amended or modified by, and only by, a written instrument executed by Seller and Purchaser.

## 17. REAL ESTATE BROKER

Purchaser and Seller covenant and agree that they have dealt with no real estate broker other than TMG Realty Advisors, which represents Seller (the "Seller's Broker"), and Colliers International – Atlanta, Inc., which represents Purchaser (the "Purchaser's Broker"), in connection with the purchase and sale of the Property under the terms of this Contract and shall hold each other harmless and indemnify one another against the claims of any other real estate broker

arising by virtue of any act or alleged act of said party. Seller's Broker represents the Seller as provided in a separate agreement between the Seller's Broker and the Seller, and Seller shall be responsible for any payments due Seller's Broker. Any commission or fee due to Purchaser's Broker will be paid by Seller's Broker in accordance with a separate agreement between Seller's Broker and Purchaser's Broker.

## 18. DISCLAIMER

(a) Purchaser acknowledges and agrees that as of the expiration of the Inspection Period, Purchaser will have had the opportunity to fully inspect the Property, will have had the opportunity to make all investigations as it deems necessary or appropriate and will be relying solely upon its inspection and investigation of the Property for all purposes whatsoever, including, but not limited to, the determination of the condition of the structures, improvements, soils, subsurface, drainage, surface and groundwater quality, and all other physical characteristics; availability and adequacy of utilities; compliance with governmental laws and regulations; access; encroachments; acreage and other survey matters; and the character and suitability of the Property. In addition, Purchaser acknowledges and agrees that the Property is being purchased and will be conveyed "As Is" with all faults and defects, whether patent or latent, as of the Closing. There have been no representations, warranties, guarantees, statements or information, express or implied, pertaining to the Property, its condition, or any other matters whatsoever, made to or furnished to Purchaser by Seller or any employee or agent of Seller, except as specifically set forth in this Contract.

(b) From and after Closing, Purchaser waives, releases, and forever discharges Seller, its directors, officers, shareholders, employees, and agents, and their respective heirs, successors, personal representatives and assigns (collectively, the "Released Parties"), of and from any and all suits, legal or administrative proceedings, claims, demands, actual damages, punitive damages, losses, costs, liabilities, interest, attorneys' fees and expenses of whatever kind and nature, in law or in equity, known or unknown (collectively, "Liabilities"), that Purchaser ever had, now has, or in the future may have, against any of the Released Parties, based upon, or arising directly or indirectly out of: (i) the condition, status, quality or nature of the Property; and (ii) the existence, presence or condition of the asbestos-containing material, if any, on, in or under the Property. Notwithstanding the foregoing to the contrary, however, nothing in this Section 18 shall release Seller from any act of fraud or a breach of any representation or warranty made by Seller pursuant to Section 20 below.

## 19. COVENANTS AND AGREEMENTS OF SELLER.



(a) Leasing Arrangements. During the pendency of this Agreement, Seller will not enter into any lease affecting the Property without Purchaser's prior written consent in each instance.

(b) New Contracts. During the pendency of this Agreement, Seller will not enter into any contract or agreement that will be an obligation affecting or an encumbrance on title to the Property or any part thereof subsequent to the Closing without Purchaser's prior written consent in each instance, except contracts entered into in the ordinary course of business that are terminable without cause (and without penalty or premium) on thirty (30) days (or less) notice.

## 20. WARRANTIES

As a material inducement to Purchaser to enter into this Contract and consummate this transaction, (a) Seller represents and warrants to Purchaser that:

- (i) Seller has not received written notice of, nor does Seller have any actual knowledge of any actual, pending or threatened action, litigation, rezoning, condemnation or proceeding in existence as of the Contract Date with respect to the Property or against the Property;
- (ii) To the best of Seller's actual knowledge, as of the Contract Date, neither the entering into of this Contract nor the consummation of the transaction contemplated hereby will constitute or result in a violation or breach by Seller of any agreement or restriction to which either Seller or the Property is subject. Seller has not received any written notice or claim of any violations of any covenants, restrictions, easements or other agreements of record or actually known to Seller benefitting, burdening or otherwise affecting the Property, including without limitation, the P&S Ground Lease.
- (iii) Seller has been duly organized and is validly existing as a Georgia limited liability company. Seller has the full right and authority and has obtained any and all consents required therefor to enter into this Contract. The person signing this Contract on behalf of Seller is authorized to do so. This Contract has been, and the documents to be executed by Seller pursuant to this Contract will be, authorized and properly executed and does and will constitute the valid and binding obligations of Seller, enforceable against Seller in accordance with their terms.
- (iv) [Deleted]

- (v) Seller has not granted to any person, firm or entity any unrecorded rights in or rights to acquire all or any part of the Property, and there is no outstanding unrecorded agreement by Seller to sell all or any part of the Property to any other person, firm or entity.
- (vi) To the best of Seller's actual knowledge and except (A) as listed in Exhibit D attached hereto and (B) any lease, sublease or occupancy agreement entered into by the lessee under the P&S Ground Lease, there are no leases, use agreements, operating agreements, management agreements, or other agreements or instruments in force or effect that grant to any person whomsoever or any entity whatsoever any right, title, interest or benefit in or to all or any part of the Property or any rights relating to the use, operation, management, maintenance or repair of all or any part of the Property.
- (vii) [Deleted]

Seller shall promptly notify Purchaser, in writing, of any event or condition known to Seller which occurs prior to Closing hereunder and which causes a material change in the facts relating to, and the truth of, any of the above representations and warranties. At the Closing, Seller shall reaffirm and restate such representations and warranties, subject to disclosure of any changes in facts or circumstances which may have occurred since the date hereof. If any change in any foregoing representation is a material change, Purchaser may, at its option, terminate this Contract by written notice to Seller and receive a full refund of the Earnest Money.

(b) As a material inducement to Seller to execute this Agreement and consummate this transaction, Purchaser represents and warrants to Seller that:

- (i) Conflicts. To the best of Purchaser's knowledge, as of the Contract Date, neither the entering into of this Contract nor the consummation of the transaction contemplated hereby will constitute or result in a violation or breach by Purchaser of any agreement or restriction to which Purchaser is subject.
- (ii) Organization and Authority. Purchaser has been duly organized and is validly existing as a municipality in the State of Georgia. Purchaser has the full right and authority and has obtained any and all consents required therefor to enter into this Contract. The person signing this Contract on behalf of Purchaser is authorized to do so. This Contract has been, and the documents

to be executed by Purchaser pursuant to this Contract will be, authorized and properly executed and does and will constitute the valid and binding obligations of Purchaser enforceable against Purchaser in accordance with their terms.

(c) The representations and warranties of Seller and Purchaser set forth in this Section 20 shall survive Closing.

## **21. SPECIAL STIPULATIONS**

(a) Any condition for Purchaser's benefit herein may be waived by the Purchaser at or before Closing.

(b) In the event that the date for taking any action under this Contract (including, but not limited to, the giving of a notice of termination or closing) falls on a Saturday, Sunday or legal holiday, then such time period shall automatically be extended until 5:00 p.m. Eastern Time on the next regularly scheduled business day in Dunwoody, Georgia.

## **22. CONTRACT DATE**

In the event this Contract is not signed simultaneously by both parties, it shall be considered to be an offer made by the party first executing it to other party. In such event, said offer shall expire at 11:59 p.m. Eastern Time on the fifth (5th) business day following execution by the offering party, unless by that time one copy executed by the party to whom the offer has been made, shall have been placed in the mail (certified, return receipt), personally delivered or delivered by nationally-recognized overnight courier to the party making the offer or delivered by e-mail; provided, however, that such e-mail delivery will be followed promptly by delivery of a copy by one of the methods described in the first sentence of Section 9(a). The "Contract Date" of this Contract shall be the date upon which the later of Seller or Purchaser to sign this Contract does so evidenced by the date beside said party's name.

**[Remainder of page intentionally left blank]**

**SELLER: American Medicorp Development Company**

By: W. Mark Kimbrough  
Name: W. Mark Kimbrough  
Title: Vice President

Date: 10/13/11

**Atlanta Healthcare Management, L.P.**

By: Atlanta Market GP, Inc.,  
its general partner

By: W. Mark Kimbrough  
Name: Mark Kimbrough  
Title: VP

Date: 10/13/11

**PURCHASER: City of Dunwoody, Georgia**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SELLER: American Medicorp Development Company**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: W. Mark Kimbrough

Title: Vice President

**Atlanta Healthcare Management, L.P.**

By: Atlanta Market GP, Inc.,  
its general partner

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PURCHASER: City of Dunwoody, Georgia**

By: WA. HT

Date: 10/13/11

Name: WARREN HUTMACHER

Title: CITY MANAGER

## EXHIBIT LIST

Exhibit A – Land Description

Exhibit B – [Deleted]

Exhibit C – Seller's Deliveries

Exhibit D – Service Contracts

**Exhibit A****Description of the Land**

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 344 OF THE 18<sup>TH</sup> DISTRICT OF DEKALB COUNTY, GEORGIA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A ½ INCH IRON PIN FOUND AT THE INTERSECTION OF NORTHEASTERLY RIGHT OF WAY OF NORTH SHALLOWFORD ROAD BEING 80 FEET IN WIDTH AND THE NORTHWESTERLY RIGHT OF WAY OF PERNOSHAL COURT, THENCE ALONG SAID NORTHEASTERLY RIGHT OF WAY ALONG A CURVE TO THE LEFT HAVING AN ARC LENGTH OF 247.51 FEET A RADIUS OF 1861.00 FEET AND BEING SUBTENDED BY A CHORD BEARING OF NORTH 43 DEGREES 35 MINUTES 14 SECONDS WEST A DISTANCE OF 247.33 FEET TO A ½ INCH IRON PIN FOUND ON SAID RIGHT OF WAY AND THE COMMON LAND LOT LINE OF LAND LOT 344 AND 345 OF THE 18<sup>TH</sup> DISTRICT OF DEKALB COUNTY, GEORGIA, THENCE LEAVING SAID RIGHT OF WAY ON THE EASTERLY PROPERTY LINE OF NOW OR FORMERLY DEKALB LAKE RIDGE LLC NORTH 02 DEGREES 58 MINUTES 45 SECONDS EAST A DISTANCE OF 275.88 FEET TO A 1.5 INCH CRIMP TOP PIPE FOUND AT THE COMMON LAND LOT CORNER OF LAND LOTS 344, 345, 352, AND 353, THENCE ALONG THE SOUTHERLY PROPERTY LINE OF NOW OR FORMERLY DEKALB LAKE RIDGE LLC AS RECORDED IN DEED BOOK 17650 PAGE 759 ALSO BEING THE COMMON LAND LOT LINE OF LAND LOTS 353 AND 344 SOUTH 88 DEGREES 58 MINUTES 15 SECONDS EAST A DISTANCE OF 829.96 FEET TO A 1 INCH CRIMP TOP PIPE FOUND, THENCE SOUTH 88 DEGREES 53 MINUTES 33 SECONDS EAST ALONG SAID COMMON LAND LOT LINE AND DEKALB LAKE RIDGE PROPERTY LINE A DISTANCE OF 769.80 FEET TO THE CENTERLINE OF NANCY CREEK BEING THE PROPERTY LINE, THENCE FOLLOWING THE MEANDERINGS OF SAID CENTERLINE OF CREEK ALONG THE WESTERLY PROPERTY LINE OF NOW OR FORMERLY DUNWOODY COURT CONDOMINIUMS RECORDED IN PLAT BOOK 4 PAGE 121 THE FOLLOWING TRAVERSE COURSES: SOUTH 44 DEGREES 01 MINUTES 11 SECONDS EAST A DISTANCE OF 3.68 FEET TO A POINT, THENCE SOUTH 55 DEGREES 57 MINUTES 24 SECONDS EAST A DISTANCE OF 13.13 FEET TO A POINT, THENCE SOUTH 31 DEGREES 57 MINUTES 35 SECONDS EAST A DISTANCE OF 31.98 FEET TO A POINT, THENCE SOUTH 22 DEGREES 07 MINUTES 00 SECONDS EAST A DISTANCE OF 167.18 FEET TO A POINT, THENCE SOUTH 11 DEGREES 21 MINUTES 35 SECONDS EAST A DISTANCE OF 77.64 FEET TO A POINT, THENCE SOUTH

06 DEGREES 53 MINUTES 04 SECONDS EAST A DISTANCE OF 40.81 FEET TO A POINT, THENCE CONTINUING ALONG THE WESTERLY PROPERTY LINE OF NOW OR FORMERLY WRENS CROSS CONDOMINIUMS RECORDED IN DEED BOOK 2729 PAGE 292 AND THE CENTERLINE OF NANCY CREEK, SOUTH 12 DEGREES 34 MINUTES 31 SECONDS EAST A DISTANCE OF 54.36 FEET TO A POINT, THENCE SOUTH 01 DEGREES 48 MINUTES 37 SECONDS WEST A DISTANCE OF 55.37 FEET TO A POINT, THENCE SOUTH 10 DEGREES 14 MINUTES 35 SECONDS WEST A DISTANCE OF 40.45 FEET TO A POINT, THENCE SOUTH 10 DEGREES 46 MINUTES 27 SECONDS EAST A DISTANCE OF 76.43 FEET TO A POINT, THENCE LEAVING SAID CENTERLINE OF NANCY CREEK ALONG THE NORTHERLY PROPERTY LINE OF NOW OR FORMERLY WELLINGTON PLACE CONDOMINIUMS AS SHOWN ON A PLAT BY BROWNING ENGINEERING AND DEVELOPMENT CO. INC. DATED SEPTEMBER 27, 1970, NORTH 88 DEGREES 08 MINUTES 36 SECONDS WEST A DISTANCE OF 289.58 FEET TO AN ¼ INCH IRON PIN FOUND, THENCE NORTH 88 DEGREES 08 MINUTES 36 SECONDS WEST A DISTANCE OF 86.33 FEET TO A P/K NAIL SET IN CUL-DE-SAC ASPHALT, THENCE ON THE RIGHT OF WAY OF PERNOSHAL COURT ALONG A CURVE TO THE LEFT HAVING AN ARC LENGTH OF 22.80 FEET A RADIUS OF 60.00 FEET AND BEING SUBTENDED BY A CHORD BEARING OF NORTH 38 DEGREES 05 MINUTES 27 SECONDS EAST A DISTANCE OF 22.66 FEET TO A P/K NAIL SET IN CUL-DE-SAC ASPHALT, THENCE NORTHWESTERLY, WESTERLY, AND SOUTHWESTERLY ALONG THE NORTHEASTERLY, NORTHERLY AND NORTHWESTERLY RIGHT-OF-WAY OF PERNOSHAL COURT THE FOLLOWING COURSE AND DISTANCES NORTH 62 DEGREES 47 MINUTES 37 SECONDS WEST A DISTANCE OF 13.95 FEET TO A ½ INCH IRON PIN FOUND, THENCE NORTH 62 DEGREES 47 MINUTES 37 SECONDS WEST A DISTANCE OF 236.28 FEET TO A ½ INCH IRON PIN SET ON SAID NORTHERLY RIGHT OF WAY OF PERNOSHAL COURT NEAR THE BACK OF CURB OF AN ASPHALT PARKING LOT, THENCE NORTH 62 DEGREES 47 MINUTES 37 SECONDS EAST A DISTANCE OF 215.53 FEET TO A ½ INCH IRON PIN SET ON SAID RIGHT OF WAY, THENCE ALONG A CURVE TO THE LEFT HAVING AN ARC LENGTH OF 174.25 FEET A RADIUS OF 602.96 FEET AND BEING SUBTENDED BY CHORD BEARING OF NORTH 71 DEGREES 04 MINUTES 22 SECONDS WEST A DISTANCE OF 173.65 FEET TO P/K NAIL SET ON SAID RIGHT OF WAY, THENCE ALONG A CURVE TO THE LEFT HAVING AN ARC LENGTH OF 88.83 FEET A RADIUS OF 602.96 FEET AND BEING SUBTENDED BY A CHORD BEARING OF NORTH 83 DEGREES 34 MINUTES 21 SECONDS WEST A DISTANCE OF 88.75 FEET TO A ½ INCH IRON PIN SET ON SAID RIGHT OF WAY, THENCE NORTH 87 DEGREES 16 MINUTES 30 SECONDS WEST A DISTANCE OF 167.60 TO A ½ INCH IRON PIN SET ON SAID RIGHT OF WAY, THENCE ALONG A CURVE TO THE LEFT HAVING AN



ARC LENGTH OF 203.54 FEET A RADIUS OF 331.56 FEET AND BEING SUBTENDED BY A CHORD BEARING OF SOUTH 74 DEGREES 37 MINUTES 12 SECONDS WEST A DISTANCE OF 200.36 FEET TO A POINT ON SAID RIGHT OF WAY, THENCE ALONG THE SAME CURVE TO THE LEFT HAVING AN ARC LENGTH OF 45.29 FEET A RADIUS OF 331.56 FEET AND BEING SUBTENDED BY A CHORD BEARING OF SOUTH 53 DEGREES 07 MINUTES 12 SECONDS WEST A DISTANCE OF 45.26 FEET TO A ½ INCH IRON PIN SET ON SAID RIGHT OF WAY, THENCE SOUTH 49 DEGREES 43 MINUTES 30 SECONDS WEST A DISTANCE OF 196.39 FEET TO A ½ IRON PIN FOUND ON THE NORTHEASTERLY RIGHT-OF-WAY OF NORTH SHALLOWFORD ROAD AND THE POINT OF BEGINNING.

SAID TRACT OR PARCEL OF LAND CONTAINS 621,145.10 SQUARE FEET OR 14.260 ACRES AS SHOWN ON PLAT BY HARTRAMPF, INC., DATED 07-03-07. LAST REVISED 06-10-08.

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 344 OF THE 18<sup>TH</sup> DISTRICT OF DEKALB COUNTY, GEORGIA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY RIGHT OF WAY OF PERNOSHAL COURT BEING 60 FEET IN WIDTH AS PER PLAT BOOK 63 PAGE 16 AND THE NORTHEASTERLY RIGHT OF WAY LINE OF NORTH SHALLOWFORD ROAD BEING 80 FEET IN WIDTH AT AN IRON PIN SET ON SAID RIGHT OF WAY, THENCE ALONG SAID SOUTHEASTERLY RIGHT OF WAY LINE OF PERNOSHAL COURT NORTH 49 DEGREES 25 MINUTES 09 SECONDS EAST A DISTANCE OF 198.21 FEET TO AN IRON PIN SET ON SAID RIGHT OF WAY, THENCE ALONG A CURVE TO THE RIGHT HAVING AN ARC LENGTH OF 98.90 FEET A RADIUS OF 271.56 FEET AND BEING SUBTENDED BY A CHORD BEARING OF NORTH 59 DEGREES 51 MINUTES 07 SECONDS EAST A DISTANCE OF 98.35 FEET TO AN IRON PIN SET ON SAID RIGHT OF WAY, THENCE ALONG THE SAME CURVE TO THE RIGHT HAVING AN ARC LENGTH OF 104.91 FEET A RADIUS OF 271.56 FEET AND BEING SUBTENDED BY A CHORD BEARING OF NORTH 81 DEGREES 21 MINUTES 07 SECONDS EAST A DISTANCE OF 104.26 FEET TO AN IRON PIN SET ON SAID RIGHT OF WAY, THENCE SOUTH 87 DEGREES 34 MINUTES 51 SECONDS EAST A DISTANCE OF 167.60 FEET TO A IRON PIN SET ON SAID RIGHT OF WAY, THENCE ALONG A CURVE TO THE RIGHT HAVING AN ARC LENGTH OF 236.91 FEET A RADIUS OF 542.96 FEET AND BEING SUBTENDED BY A CHORD BEARING OF SOUTH 75 DEGREES 04 MINUTES 52 SECONDS EAST A DISTANCE OF 235.03 FEET TO AN IRON PIN SET ON SAID RIGHT OF WAY, THENCE SOUTH 62 DEGREES 34 MINUTES 52

SECONDS EAST A DISTANCE OF 5.01 FEET TO A 1 INCH OPEN TOP PIPE FOUND ON SAID RIGHT OF WAY, THENCE LEAVING SAID 60 FOOT RIGHT OF WAY SOUTH 25 DEGREES 59 MINUTES 39 SECONDS WEST A DISTANCE OF 327.10 FEET TO A ½ INCH IRON PIN FOUND, THENCE ALONG THE NORTHERLY PROPERTY LINE OF NOW OR FORMERLY GABLES REALTY LTD. RECORDED IN DEED BOOK 13058 PAGE 546 NORTH 88 DEGREES 01 MINUTES 41 SECONDS WEST A DISTANCE OF 259.75 FEET TO A ½ INCH IRON PIN FOUND, THENCE SOUTH 62 DEGREES 57 MINUTES 32 SECONDS WEST A DISTANCE OF 164.65 FEET TO AN IRON PIN SET AND SAID POINT BEING ON THE NORTHERLY RIGHT OF WAY OF NORTH SHALLOWFORD FORD, THENCE ALONG SAID RIGHT OF WAY NORTH 38 DEGREES 34 MINUTES 25 SECONDS WEST A DISTANCE OF 301.62 FEET TO THE POINT OF BEGINNING.

SAID TRACT OR PARCEL OF LAND CONTAINS 210,142 SQ.FT. OR 4.82 ACRES AS SHOWN ON PLAT BY HARTRAMPF, INC., DATED 06-05-07 LAST REVISED 06-10-08

**Exhibit B**

[DELETED]

## Exhibit C

### SELLER'S DELIVERIES

- (i) Tax bills for the Property from the years 2009, 2010 and 2011, if available;
- (ii) [Deleted];
- (iii) Any environmental studies of the Property in Seller's actual possession;
- (iv) All written contracts and agreements relating to the ownership, leasing, operation, management or maintenance of the Property (the "Service Contracts") which are listed in Exhibit 2 attached hereto;
- (v) Copy of P&S Ground Lease and any amendments thereto;
- (vi) Copies of July 3, 2007 Surveys of the Land (or portions of the Land) by Hartrumpf Engineers – Architects - Surveyors; and
- (vii) Copies of any commitments for title insurance policies or title insurance policies pertaining to the Property or any portion thereof in Seller's actual possession.

**Exhibit D**

**SERVICE CONTRACTS**

- 1) Management Contract with Lincoln Harris, CSG; and
- 2) Parking Agreement dated as of August 18, 1980 between Seller (by its predecessor Charter Medical Corporation) and P&S Associates.

WALLER LANSDEN DORTCH & DAVIS, LLP

NASHVILLE CITY CENTER  
511 UNION STREET, SUITE 2700  
NASHVILLE, TENNESSEE 37219-8966  
(615) 244-6380  
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1901 SIXTH AVENUE NORTH, SUITE 1400  
BIRMINGHAM, ALABAMA 35203-2623  
(205) 214-6380

Michael J. Czopek  
(615) 850-8709  
michael.czopek@wallerlaw.com

May 7, 2012

**VIA OVERNIGHT COURIER**

Sharon Lowery  
City of Dunwoody  
City Clerk  
41 Perimeter Center East, Suite 250  
Dunwoody, Georgia 30346

Re: Real Estate Option Agreement – Parcels A2 and C

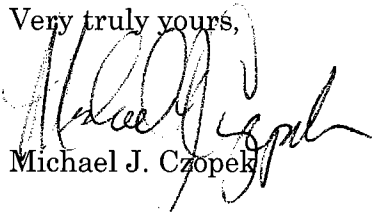
Dear Ms. Lowery:

I will be assisting Carla Fenswick with the above-captioned matter.

Enclosed please find an original fully executed Real Estate Option Agreement, effective April 23, 2012, by and between Atlanta Healthcare Management, L.P. and American Medicorp Development Company (together "Seller") and the City of Dunwoody, Georgia ("Purchaser").

Please let me know if you have any questions. Thank you very much.

Very truly yours,

  
Michael J. Czopek

MJC/mjc

cc: Carla Fenswick  
Ron Woods

## **REAL ESTATE OPTION AGREEMENT**

**THIS REAL ESTATE OPTION AGREEMENT** (this “**Agreement**”) made as of the date upon which the final party to execute this Agreement does so as evidenced by the date below such party’s signature (the “**Agreement Date**”) by and between Atlanta Healthcare Management, L.P. and American Medicorp Development Co. (together, “**Seller**”) and the City of Dunwoody, Georgia (“**Purchaser**”).

### **W I T N E S S E T H :**

**WHEREAS**, Seller is the owner of one or more certain parcels of real property in Dunwoody, DeKalb County, Georgia, which parcels are identified as Parcel A2 and Parcel C on Exhibit A attached hereto and made a part hereof (collectively, “the **Option Property**”); and

**WHEREAS**, Seller desires to grant to Purchaser an option to purchase the Option Property pursuant to the terms of this Agreement; and

**WHEREAS**, all terms used in this Agreement with an initial capital letter which are not otherwise defined herein shall have the meanings given to such terms in the Reinstatement.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises of the parties, Seller and Purchaser agree as follows:

1. **Grant of Option.** For and in consideration of the sum of Fifty Thousand and No/100 Dollars (\$50,000.00) (the “**Option Money**”) that shall be paid to Seller within three days after the Agreement Date, Seller hereby gives and grants unto Purchaser, upon the terms and conditions hereinafter set forth, the exclusive and irrevocable right and option to purchase the Option Property (the “**Option**”). Notwithstanding any provision of this Agreement or the “Reinstatement” (as defined below) seeming to the contrary, Purchaser acknowledges and agrees that the Option Money is consideration paid to Seller in return for the Option and that therefore, the Option Money shall be non-refundable (absent Seller’s default) regardless of whether Purchaser actually purchases the Option Property. In the event Purchaser does not exercise the Option or does not otherwise purchase the Option Property, the Option Money shall be retained by Seller in full satisfaction of all obligations of Purchaser under this Agreement. If Purchaser does exercise the Option, then the Option Money shall be applied to the Purchase Price at the closing of the Parcel C.

2. **Option Period.** The Option may be exercised at any time from the Agreement Date up to 11:59 p.m. Eastern Time, on the first anniversary of the Agreement Date (the “**Option Period**”).

3. **Exercising the Option.** Purchaser shall have the right at any time during the Option Period, within its sole discretion, to exercise the Option to purchase the Option Property by giving written notice ("**Purchaser's Option Notice**"). In the event Purchaser exercises the Option, Purchaser shall purchase the Option Property pursuant to the terms and conditions of that certain Reinstatement of and Third Amendment to Contract for Purchase and Sale (Hospital) between Seller and Purchaser, dated as of March 26, 2012 (the "**Reinstatement**"), as applicable to the Option Property. Notwithstanding the foregoing, however, Purchaser acknowledges and agrees that it has already completed its inspection and review of title and survey matters for the Option Property and that the Title Objection Deadline has expired and is of no further effect except as expressly provided otherwise in Section 4(c) of the Reinstatement. Further, Purchaser acknowledges and agrees that the Inspection Period (as defined in Section 5 of the Reinstatement) has expired and that Purchaser has no right to terminate the Reinstatement or this Agreement with respect to the Option Property; provided, however, that Purchaser may elect not to exercise the Option.

4. **Purchase Price and Closing Date.**

(a) **Closing Date(s).** Purchaser may exercise the Option only for all of the Option Property, and upon such exercise, Purchaser shall have an obligation to close its purchase of all of the Option Property. Purchaser may elect, however, to close its purchase of Parcel A2 and Parcel C on different dates by giving written notice to Seller simultaneously with Purchaser's exercise of the Option. Purchaser will identify the date(s) by which it will close its purchase of the Option Property; provided, however, that the purchase and sale of Parcel A2 must close, if at all, on or before July 31, 2013 and the purchase and sale of Parcel C must close, if at all, on or before August 29, 2014. Closing dates for each or both of the two parcels comprising the Option Property may not be sooner than thirty (30) days after Purchaser exercises the Option with respect to such parcel. Purchaser shall not have any right to use or occupy any part of the Option Property unless and until Purchaser has closed its purchase of such part of the Option Property.

(b) **Purchase Price.** The purchase price for each of the two parcels (the "Purchase Price") comprising the Option Property will depend on the closing dates for such parcels. The Purchase Price for each of the parcels will be as set forth on the schedule attached hereto as Exhibit B and made a part of this Agreement. The Option Money will be applied to the purchase price for Parcel C at the applicable closing.

5. **Seller's Covenants.** Seller hereby agrees to perform the covenants set forth in Sections 15 and 19 of the Reinstatement with respect to the Option Property.



6. Real Estate Brokers. Purchaser and Seller covenant and agree that they have dealt with no real estate broker other than TMG Realty Advisors, which represents Seller (the "Seller's Broker"), and Colliers International – Atlanta, Inc., which represents Purchaser (the "Purchaser's Broker"), in connection with the purchase and sale of the Option Property under the terms of this Agreement and the Reinstatement and shall hold each other harmless and indemnify one another against the claims of any other real estate broker arising by virtue of any act or alleged act of said party. Seller's Broker represents the Seller as provided in a separate agreement between the Seller's Broker and the Seller, and Seller shall be responsible for any payments due Seller's Broker. Any commission or fee due to Purchaser's Broker will be paid by Seller's Broker in accordance with a separate agreement between Seller's Broker and Purchaser's Broker.

7. Warranties. As a material inducement to Purchaser to enter into this Contract and consummate the transaction contemplated herein, Seller hereby represents and warrants to Purchaser all of the representations and warranties set forth in Section 20(a) of the Reinstatement and Purchaser hereby represents and warrants to Seller all of the representations and warranties set forth in Section 20(b) of the Reinstatement. In accordance with Section 20 of the Reinstatement, Seller shall promptly notify Purchaser, in writing, of any event or condition known to Seller which occurs prior to a closing hereunder and which causes a material change in the facts relating to, and the truth of, any of the representations and warranties set forth in Section 20(a) of the Reinstatement. If any change in any such representation is a material adverse change, Purchase may at its sole option, cancel its exercise of the Option and not close its purchase of the Option Property; provided, however that in no event shall Purchaser be entitled to receive a refund of the Option Money.

8. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

9. Entire Agreement. This Agreement embodies the entire agreement between the parties relative to the subject matter) hereof, and there are no oral or parol agreements existing between Seller and Purchaser relative to the subject matter hereof which are not expressly set forth herein and covered hereby.

10. Headings. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof.

11. Interpretation. Whenever the context hereof shall so require, the singular shall include the plural, the male gender shall include the female gender and the neuter, and vice versa.

12. Notice. Any notice required or permitted to be delivered hereunder shall be sent and deemed received in accordance with the notice provisions of the Purchase and Sale Contract.

13. Governing Law. This Agreement shall be construed under and in accordance with the laws of the State of Georgia.

14. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

15. Attorneys' Fees. Should either party employ an attorney or attorneys to enforce any of the provisions hereof or to protect its interest in any manner arising under this Agreement, the non-prevailing party in any action pursued in courts of competent jurisdiction (the finality of which is not legally contested) agrees to pay to the prevailing party all reasonable costs, damages and expenses, including attorneys' fees, witness fees and travel and lodging expenses, expended or incurred in connection therewith.

16. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall comprise one and the same instrument.

17. Business Day. In the event that the date for taking any action under this Agreement (including, but not limited to, the giving of a notice of exercise) falls on a Saturday, Sunday or legal holiday, then such time period shall automatically be extended until 5:00 p.m. Eastern Time on the next regularly scheduled business day in Dunwoody, Georgia.

[Signatures appear on following page]

EXECUTED AND DELIVERED as of the Agreement Date.

**SELLER: American Medicorp Development Co.**

By: Nicholas L. Paul  
Name: Nicholas L. Paul  
Title: Vice President  
Date: 4/20/12

**Atlanta Healthcare Management, L.P.**

By: Atlanta Market GP, Inc.,  
its general partner

By: Nicholas L. Paul  
Name: Nicholas L. Paul  
Title: VP  
Date: 4/20/12

**PURCHASER: City of Dunwoody, Georgia**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

EXECUTED AND DELIVERED as of the Agreement Date.

**SELLER: American Medicorp Development Co.**

By: \_\_\_\_\_  
Name: Nicholas L. Paul  
Title: Vice President  
Date: \_\_\_\_\_

**Atlanta Healthcare Management, L.P.**

**By: Atlanta Market GP, Inc.,  
its general partner**

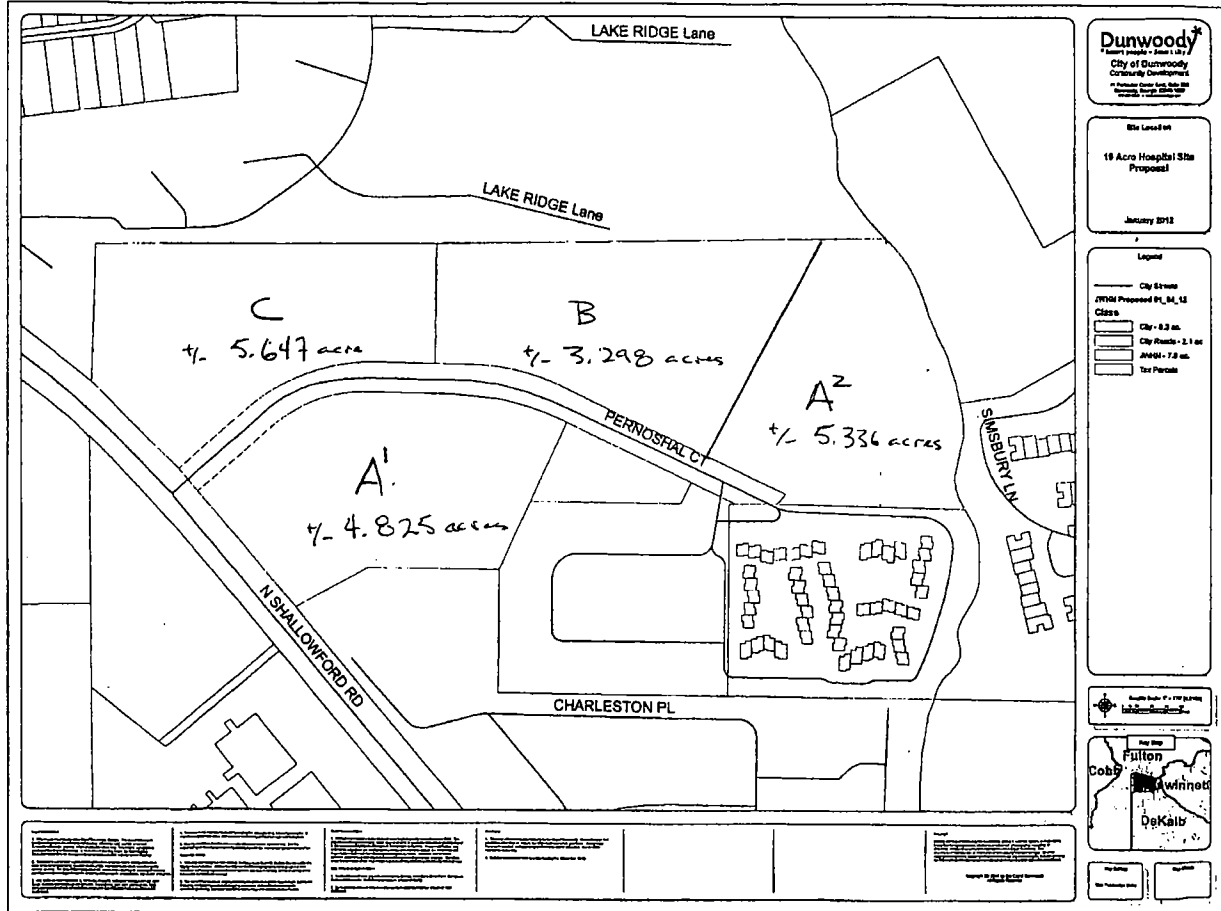
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**PURCHASER: City of Dunwoody, Georgia**

By: WA. HT  
Name: WARREN HUTMACHER  
Title: CITY MANAGER  
Date: 4/23/12

Attest:  
By: Sharon Lowery  
Name: Sharon Lowery  
Title: City Clerk  
Date: 4/23/12

Exhibit A  
Option Property



## Exhibit B

Closing and Price Schedule

<b>Closing Date</b>	<b>Parcel "A2" Option Price</b>
Before 7/1/2012	\$505,250.00
7/1/2012 – 7/31/2012	\$508,365.00
8/1/2012 – 8/31/2012	\$511,582.00
9/1/2012 – 9/30/2012	\$514,697.00
10/1/2012 – 10/31/2012	\$517,916.00
11/1/2012 – 11/30/2012	\$521,030.00
12/1/2012 – 12/31/2012	\$524,249.00
1/1/2013 – 1/31/2013	\$527,467.00
2/1/2013 – 2/28/2013	\$530,374.00
3/1/2013 – 3/31/2013	\$533,592.00
4/1/2013 – 4/30/2013	\$536,707.00
5/1/2013 – 5/31/2013	\$539,925.00
6/1/2013 – 7/31/2013	\$543,040.00

Maximum Interest = \$37,790.00 (\$505,250.00 @ 7.5%, up to 1 year)

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<b>Closing Date</b>	<b>Parcel “C” Option Price</b>
Before 7/1/2012	\$1,876,750.00
7/1/2012 – 7/31/2012	\$1,884,084.00
8/1/2012 – 8/31/2012	\$1,891,662.00
9/1/2012 – 9/30/2012	\$1,898,996.00
10/1/2012 – 10/31/2012	\$1,906,574.00
11/1/2012 – 11/30/2012	\$1,913,908.00
12/1/2012 – 12/31/2012	\$1,921,486.00
1/1/2013 – 1/31/2013	\$1,929,064.00
2/1/2013 – 2/28/2013	\$1,935,909.00
3/1/2013 – 3/31/2013	\$1,943,487.00
4/1/2013 – 4/30/2013	\$1,950,821.00
5/1/2013 – 5/31/2013	\$1,958,399.00
6/1/2013 – 6/30/2013	\$1,965,733.00
7/1/2013 – 7/31/2013	\$1,973,311.00
8/1/2013 – 8/31/2013	\$1,980,889.00
9/1/2013 – 9/30/2013	\$1,988,223.00
10/1/2013 – 10/31/2013	\$1,995,801.00
11/1/2013 – 11/30/2013	\$2,003,135.00
12/1/2013 – 12/31/2013	\$2,010,713.00
1/1/2014 – 1/31/2014	\$2,018,291.00
2/1/2014 – 2/28/2014	\$2,025,136.00
3/1/2014 – 3/31/2014	\$2,032,714.00
4/1/2014 – 4/30/2014	\$2,040,048.00

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5/1/2014 – 5/31/2014	\$2,047,626.00
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6/1/2014 – 8/29/2014	\$2,054,960.00
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Maximum Interest = \$178,210.00 (\$1,876,750.00 @ 4.75434%, up to 2 years)