

BMC Hospital, LLC

June 8, 2021

VIA EMAIL

James Davis, Mayor
City of Bayonne

Salvatore Gullace, Council Member
City of Bayonne

Sharon Ashe-Nadrowski, Council President
City of Bayonne

Gary La Pelusa, Sr., Council Member
City of Bayonne

Neil Carroll III, Council Member
City of Bayonne

Juan M. Perez, Council Member
City of Bayonne

Re: Bayonne Medical Center Real Estate

Mayor Davis and Members of the Bayonne City Council:

As you are aware, almost a year ago, on June 1, 2020, BMC Hospital LLC entered into a contract with CarePoint to purchase the assets of, and become the licensed operator of, Bayonne Medical Center. We, as the principals of BMC Hospital, LLC, are committed to ensuring that the residents of the City of Bayonne and its surrounding areas have access to the highest quality healthcare. As you are acutely aware, a major impediment to securing such quality healthcare is the dispute involving the real estate upon which Bayonne Medical Center sits.

Through exercise of their lawful power pursuant to the Eminent Domain Act of 1971, N.J.S.A. 20:3-1, *et. seq.*, the City of Bayonne and the Hudson County Improvement Authority have the power to end this ongoing dispute, ***and more importantly, take control of the Hospital real estate, thereby always ensuring that the City of Bayonne, rather than a federal bankruptcy judge or private land speculator, has rights to determine that a hospital remains on that site to serve its citizens so that they can always obtain healthcare services locally where they live***

To show our deep commitment to operating Bayonne Medical Center, and to assuage any concerns you may have about the use of eminent domain with respect to the hospital property, attached to this letter is a copy of a proposed Lease Option. The Lease Option evidences our pledge to working in good faith with the City and the HCIA. Among other things, the Lease Option contains the following terms:

- ***To ensure that the City of Bayonne is not impacted financially, and does not need to raise taxes,*** a substantial monthly rental amount to cover all of the following:
 - (i) the monthly debt service on the related bonds (inclusive of all costs of issuance), *plus*
 - (ii) monthly proration of the real estate taxes for the property at 2020 levels, and an amount equivalent to any loss in real estate taxes received by the City in the event the property is deemed tax-exempt, *plus*
 - (iii) any increases in real estate taxes thereafter; *plus*
 - (iv) the cost of fire insurance (if not directly obtained by BMC Hospital).

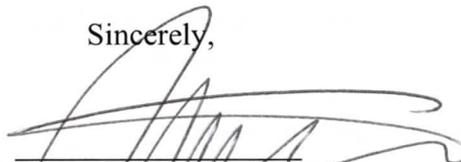
- BMC Hospital will provide a security deposit equal to 3 years rent, thus providing security and collateral for our obligations under the lease.
- BMC Hospital will be responsible for all expenses related to utilities, maintenance and repair, as well as paying for needed capital improvements.
- The lease term will mirror the term of the related bonds to protect the City.
- BMC pledges to operate an acute care hospital on the premises for the duration of the lease, with same or greater level of services as currently provided, in addition to expanding into other needed specialty and subspecialty services (e.g., the full range of women's health services and obstetrics) – to serve the citizens of Bayonne locally *in Bayonne*.
- BMC agrees to participate in all governmental programs, and to expand its contracts with commercial payor programs, to ensure full access to care to all citizens of Bayonne.
- BMC commits to complying with all State and Federal laws and regulations, and all accreditation requirements, to ensure quality healthcare services to the people of Bayonne.
- BMC commits not only to maintain but to expand staffing at the hospital as services are expanded in the short-term and long-term (and to recognize all existing unions).
- BMC Hospital will submit bi-annual reports to the City to evidence our compliance with the requirements of the lease.

The attached Lease Option has been carefully drafted, and we have each reviewed it with BMC Hospital's legal counsel and other advisors. We are ready, willing and able to work with the City and the HCIA, and to move forward with our plan to keep the City of Bayonne (and Hudson County) healthy.



Feliks Kogan
Principal, BMC Hospital, LLC

Sincerely,



Wayne Hatami
Principal, BMC Hospital, LLC



Anthony DeGradi
Principal, BMC Hospital, LLC

Gregg Rock, D.P.M.

Principal, BMC Hospital, LLC

Cc: Joseph Demarco, Esq
Thomas A. DeGise, County Executive, Hudson County Improvement Authority
Norman M. Guerra, CEO, Hudson County Improvement Authority

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 Principal, BMC Hospital, LLC

 Wayne Hatami
 Principal, BMC Hospital, LLC

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 Gregg Rock, D.P.M.
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 Thomas A. DeGise, County Executive, Hudson County Improvement Authority
 Norman M. Guerra, CEO, Hudson County Improvement Authority

Attachment 1

LEASE OPTION

This **LEASE OPTION** is made as of June __, 2021, by and among IJKG Opco, LLC d/b/a CarePoint-Bayonne Medical Center (“IJKG Opco”), BMC Hospital, LLC (“BMC”), the Hudson County Improvement Authority (the “HCIA”) and the City of Bayonne (the “City”). IJKG Opco, BMC, the HCIA and the City shall be collectively referred to as “Parties”, and each a “Party”.

WHEREAS, the Board of Chosen Freeholders of the County of Hudson (the “County”) created the HCIA by resolution adopted on September 25, 1974, pursuant to and in accordance with the County Improvement Authorities Law (the “Act”), *N.J.S.A. 40:37A-44, et seq.*;

WHEREAS, certain property in the City identified on the official tax maps of the City as Block 159, Lots 14 & 15, Block 402.02, Lot 2.02, Block 164, Lot 5.01, and Block 164, Lot 5.01, Qualifier TO1 (collectively, the “Property”) is utilized for the operation of Bayonne Medical Center;

WHEREAS, the HCIA has determined that it is necessary to acquire the Property and any interests therein, tangible and intangible, pertaining to the business and operation conducted thereon for the general welfare, health and safety of the residents of the County and the City;

WHEREAS, pursuant to *N.J.S.A. 40:37A-69*, the County desired to consent to the condemnation of the Property and any interests therein by the HCIA, in accordance with and in the manner provided by the Eminent Domain Act of 1971, *N.J.S.A. 20:3-1, et seq.* (the “Eminent Domain Act”);

WHEREAS, by Resolution Number 285-5-2020 dated May 14, 2020 (the “Resolution”), the County consented to the condemnation of the Property and any interests therein by the HCIA as required by *N.J.S.A. 40:37A-69*, in accordance with and in the manner provided by the Eminent Domain Act;

WHEREAS, pursuant to the Resolution, the County also authorized the HCIA to seek the assistance of the Commissioner of the New Jersey Department of Health (“DOH”) pursuant to the Emergency Health Powers Act, *N.J.S.A. 26:13-1, et. seq.*;

WHEREAS, the City is a body corporate and politic and an agency and instrumentality of the State of New Jersey;

WHEREAS, IJKG Opco currently owns and operates Bayonne Medical Center;

WHEREAS, BMC and IJKG Opco entered into an Asset Purchase and Sale Agreement dated June 1, 2020 (“APA”), pursuant to which, among other things, BMC agreed to purchase substantially all of the assets of IJKG Opco (and certain assets of certain related entities) that are necessary for BMC to continue the operation of Bayonne Medical Center as an acute care hospital with affiliated medical services (the “Transaction”);

WHEREAS, BMC is deeply committed to closing the Transaction and growing Bayonne Medical Center, and has committed significant time and resources towards that end, including, without limitation, via securing funding of Seventy Five Million Dollars (\$75,000,000), as evidenced by the proof of funds previously submitted by BMC to the DOH;

WHEREAS, the execution of this Lease Option enables the parties to the APA to secure the requisite regulatory approvals from the DOH needed to close the Transaction; and

WHEREAS, in connection with the authority granted to the HCIA by the County to condemn the Property, the HCIA and the City believe it is in the best interests of the citizens of the City and the County to ensure the continued and uninterrupted operation of Bayonne Medical Center by a qualified hospital operator.

NOW THEREFORE, in consideration of the mutual promises set forth herein, the parties agree to the following terms.

1. **Lease of Property**. Commencing on earlier of (the “Commencement Date”) (i) the closing date of the purchase of the Property by the HCIA, the City or other instrumentality from 29 E 29 Street Holdings, LLC or (ii) the effective date of an Order entered by a Court of competent jurisdiction authorizing the taking of the Property in an eminent domain proceeding (“Eminent Domain Proceeding”), IJKG Opco, in the event the Transaction has not closed by the applicable date in (i) or (ii) of this Section 1, or BMC, in the event the Transaction has closed by the applicable date in (i) or (ii) of this Section 1, shall execute a lease with HCIA or the City, whichever is the deeded owner of the Property at the time, subject to the terms hereof (“Lease”). In the event the Transaction has not closed by the date the HCIA or the City become the deeded owner of the Property, IJKG Opco shall assign or sublet all of its rights, title and interest in the Lease to BMC effective as of the closing date of the Transaction.

2. **Annual Rent**. The annual base rent, paid in equal monthly installments, shall be in an amount equal to the following:

- (a) the amount necessary to fund the annual debt (bond or mortgage debt) service, including interest, principal, fees and all costs of issuance, to be incurred by the HCIA or the City, as applicable, to take or acquire the Property; *plus*
- (b) to the extent not otherwise included in the debt service costs addressed in Section 2(a) above, (i) all costs incurred by the HCIA and the City including, but not limited to, attorneys’ fees, appraisal costs, filing fees and all other expenses in connection with the Eminent Domain proceeding, *plus* (ii) all costs incurred by the HCIA and the City including, but not limited to, closing costs, attorney’s fees, bond issuance costs, mortgage costs and fees, filing fees and title insurance related to any financing to be incurred by the HCIA and/or the City in connection with the taking/acquisition of the Property, which shall be amortized over the first three (3) years of the Lease; *plus*
- (c) an amount equal to annual real estate taxes for the Property at 2020 levels, and an amount equivalent to any loss in real estate taxes received by the City in the event the property is deemed tax-exempt, plus any increases thereafter applied to similarly situated property; *plus*

(d) the cost of fire insurance for the Property, if not otherwise obtained directly by BMC.

3. **Term of Lease.** The Lease shall be coterminous with the repayment schedule of the bonds or mortgage debt but, in no event shall be less than fifteen (15) year with options on the part of the tenant for ten (10) additional five (5) year renewal terms beginning on the Commencement Date (the “Term”).

4. **Use; BMC Covenants.** During the Term:

(a) The Property shall be used to operate an acute care hospital and affiliated medical businesses. BMC covenants that acute care hospital services will be provided at the same or greater levels as was provided by IJKG Opco immediately prior to the Commencement Date, and further BMC shall expand into new specialty and subspecialty services not provided via IJKG Opco (such as the full range of women’s health services and obstetrics), including, without limitation, via investment in new equipment and recruitment of new physicians.

(b) BMC shall ensure that the hospital participates in Medicare, Medicaid all other applicable governmental healthcare programs and all managed care contracts then existing as of the Commencement Date, and further shall use commercially reasonable best efforts to obtain managed care contracts with other third party commercial payors.

(c) BMC shall ensure that the hospital complies in all material respects with the applicable rules and regulations of the DOH and the Centers for Medicare & Medicaid Services and the accreditation requirements of the Joint Commission, and further BMC shall promptly remedy any deficiencies identified in surveys by any governmental agency or accrediting body.

(d) BMC shall provide bi-annual reports to the City and the HCIA, which reports shall detail the status of the acute care hospital and affiliated medical businesses and BMC’s compliance with the terms of this Lease Option and/or the Lease, as applicable.

5. **Employment Opportunities.** BMC shall make commercially reasonable best efforts to employ all staff then employed by Bayonne Medical Center as of the Commencement Date, and further to recognize the labor unions that represent employees of Bayonne Medical Center and to assume all existing collective bargaining agreements. BMC shall increase staffing at Bayonne Medical Center as services are expanded, and shall work collaboratively with staff from all levels – including, without limitation, not only physicians and nurses and collective bargaining representatives, but also administrative, clerical & support services staff and volunteers – in order to get staff input as to improvements to the hospital’s operations and service offerings.

6. **Security Deposit.** As security for the BMC’s obligations under the Lease, BMC shall provide a security deposit – either in cash or via a Letter of Credit – in an amount equal to thirty six (36) months’ rent under the Lease.

7. **Operating Expense.** BMC shall be responsible for the cost of all utilities, maintenance and repairs related to the Property. Further, BMC shall be responsible for the costs of all necessary capital improvements.

8. **Conditions Precedent.** Although this Lease Option constitutes a legal binding document, this Lease Option is subject to and contingent on a condition subsequent, namely, HCIA or the City's acquisition of title from 29 E 29 Street Holdings, LLC. A mutually satisfactory Lease consistent with this Lease Option will govern the parties' relationship after the occurrence of such condition subsequent and the terms of such Lease once said Lease is reviewed, executed and delivered to all Parties.

Accepted and Agreed this ___ day of June 2021
BMC HOSPITAL, LLC

By: _____
Wayne Hatami, President

Accepted and Agreed this ___ day of June 2021
IJKG OPCO, LLC

By: _____
William Pelino, Chief Financial Officer

Accepted and Agreed this ____ day of June 2021
CITY OF BAYONNE

By: _____
James Davis, Mayor

Accepted and Agreed this ____ day of June 2021
HUDSON COUNTY IMPROVEMENT AUTHORITY

By: _____
Thomas A. DeGise, County Executive