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MEMORANDUM

TO: Bay Medical Center Board of Trustees and
Steve Johnson, President/CEO

FROM: Robert C. Jackson

DATE: February 2, 2012

RE: Executive Summary

Executive Summary of Proposed Lease Agreement

The transaction to lease Bay Medical Center to a joint venture between LHP and Sacred Heart (the JV) has two critical components: (i) the Lease Agreement (Lease), and (ii) the Asset Purchase Agreement (APA). The Lease Agreement leases all of the District's Real Property and contains the continuous obligation of the parties. The APA sells substantially all of the other District assets and contains the closing and indemnification provisions. Here is a summary of the major terms in the Lease. Changes from the December draft of the Lease are *italicized*, [comments in *brackets*].

- Leased Property. This is a lease of substantially all of the Real Property currently owned, leased, or controlled by BMC.
- Term. The initial term is forty (40) years, with two (2) ten (10) year renewal options exercisable at the discretion of the JV. The JV pays \$100,000 a year as ground rent during the two extended terms.
- Structure. The lease will be with a Florida corporation yet to be named (NEWCO, a placeholder) as is required by Florida law. **NEWCO will be a wholly owned subsidiary of Bay County Health System LLC, a Delaware LLC whose partners are**

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LHP Hospital Group and Sacred Heart Health System (the JV). The LLC will unconditionally guarantee the obligations of NEWCO.

- Rent. The total transaction payment is \$154,000,000, paid at closing, approximately 80% cash and 20% in 3-month bridge note. *The portion of the total transaction payment allocated to the Lease is \$123,200,000 in pre-paid rent, which will be paid in cash at closing [no allocation previously provided]. There is no escrow funding requirement until all cash is received.*
- Community Benefit Standards / Charity Care. The JV Hospital shall always be operated in accordance with the 501(c)(3) IRS code community standards and the Florida Health Care Responsibility Act (Laws of Florida 87-92 and Chapter 154, Florida Statutes). These standards include (i) acceptance of all Medicaid and Medicare patients; (ii) acceptance of all emergency patients regardless of ability to pay; (iii) maintenance of an open medical staff; and (iv) the continued provision of the general public health care in Bay County at a reasonable cost. The JV Hospital will also adopt BMC's current charity care policies at closing.
- Maintenance of Clinical Services. Health care services will be maintained on the premises for the entire term of the Lease. *Acute care hospital and substantially similar clinical services to what is currently offered by Bay Medical Center will be maintained for a minimum of ten (10) years after closing [was previously 5 years].*
- Physicians and Medical Staff. All physicians currently under contract with the Hospital will remain under contract and will be provided malpractice insurance by the JV. No changes in the Medical Staff Bylaws or Medical Staff members at closing without the consent of the Medical Staff.
- BMC Foundation Signage / Hospital Name. The JV shall maintain existing Foundation and other benefactor signage in areas visible to the public. The "Bay Medical Center" name shall be used in the identification of the Hospital throughout the term. Some variation of "Sacred Heart Health System" shall also be used as long as SHHS remains involved in the JV.
- Maintenance and Repairs of Facility. The JV shall have sole responsibility to repair the facility and must provide notice of any repair that exceeds One Million Dollars (\$1,000,000). *The JV shall maintain the facilities in accordance with Joint Commission, AHCA, CMS, and other similar standards [additional clarity for*

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facility standards]. The JV may make alterations as needed on the premises, but shall seek approval of the District for any alterations made, whose value exceeds One Million Dollars (\$1,000,000) in the last ten (10) years of the initial forty (40) year term, and the last two and a half (2 ½) years of any remaining term, *but no consent is required to maintain facility according to the previous standards [additional clarity]*.

- Utilities and Insurance. Lessee shall pay all utilities during the term of the lease. Lessee shall carry adequate insurance on the property and employees, including hurricane coverage (wind and flood) and professional liability coverage. The JV will not have sovereign immunity.
- JV's Right to Finance. The JV may mortgage its leasehold interest in the Real Property (but not the fee interest, which the District keeps). *The JV may not require the District to subrogate its fee interest to the mortgage [removal of previous term]*.
- Assignments, Subletting, and First Right of Refusal. BMC has a first right of refusal for bona-fide offers from a third party for the first ten (10) *[was previously 20]* years of the Lease. *Assignments are prohibited under the Lease without District written consent unless to a Qualified Assignee [new additional restriction on assignment]*, which is another experienced acute-care hospital operator (owns or manages no fewer than 5 hospitals). The JV, however, may assign to an affiliate. *The JV may sublet as necessary, but not the entire hospital [new, more inclusive, similar to assignment]*. The District may not assign its interest without consent.
- Representations and Warranties. These are specific warranties and representations by the District and the JV. The goal is full disclosure of important matters that may affect Hospital operations by both sides.
- Indemnification. Generally, the District is responsible for claims that accrue before closing. The JV is responsible for claims that accrue after closing. The District agrees to reserve \$15,400,000 of the transaction payment in escrow to indemnify the JV for claims that accrue prior to closing. The \$15,400,000 is a hard cap and the total extent of the District's liability for indemnification under the Lease. Much of the mechanics of the indemnification provisions are in the APA.

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- Defaults and Remedies. Generally, default claims are subject to mediation and arbitration. Injunctive relief (equitable, court-ordered relief), is also available for most defaults. Extraordinary relief is available to the District under certain conditions, including the JV's abandonment of the hospital, the JV's loss or exclusion from federal health care programs, the JV's loss of its hospital license, or its *failure to provide adequate charity care [added specific reference to this obligation as a substantial breach, with objective standards]*. Extraordinary remedies include a complete forfeiture of the lease or a right to cancel the lease for net book value, depending upon the breach.
- Option to Purchase. The JV has the option to purchase the leased property for minimal value if the District tries to sell or transfer it out from under them. This option specifically excludes a transfer of the fee to the County or an involuntary dissolution of the District.
- Local and JV Boards. A local twelve-member board comprised of up to fifty percent (50%) physicians from the active medical staff will oversee the operations at JV Hospital. **This Local Board is advisory**, but can act as delegated to by the JV Board. The District will have one (1) member on the JV Board of Directors, selected by the JV from a slate of two (2) candidates proposed by the District. **The JV Board will be responsible for strategic oversight of the JV Hospital, including complying with the Catholic Directives**, medical staff matters, physician recruitment, adherence to Joint Commission standards, and fostering community relationships.
- Covenant Not to Compete. The District agrees not to directly compete against the JV for ten (10) years *[shortened from entire term to 10 years]*.
- Expiration of the Term. *District or successor has the option to retake property for net book value at the time of expiration. If District refuses to exercise the option, JV can purchase property outright for a minimal amount. If JV declines to purchase property, the property reverts to the District. [added option to buy back, not requirement, for all, and effect if options not exercised]*
- Limited Guaranty. LHP and SHHS guarantee payment and the obligations on the Lease through closing. The JV fully guarantees the obligations of NEWCO.