Amendment To JOINT USE AGREEMENT Mountain View Hospital Lift Station

RECITALS

- A. Pursuant to that certain Joint Use Agreement ("Agreement"), attached as Exhibit A-1, dated Sept. 19, 2007 by and between Hospital and Bar K, Hospital granted to Bar K, among other things, certain rights and obligations pertaining to the use and maintenance of the Mountain View Hospital Lift Station.
 - B. Hospital and Bar K wish to amend the Agreement.

NOW THEREFORE, in consideration of the sum of ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual promises and subject to the conditions set forth below, Hospital and Bar K hereby agree as follows:

- 1. Section 2. <u>Right to Connect to Lift Station</u> is amended to modify the term of the Agreement. The term of this Agreement shall be fifty-five (55) years from the date of the Agreement.
- 2. Section 9, <u>Early Termination</u>, of the Agreement is amended to add the following new subsection (c):
- "(c) For so long as the nursing home facility, as described in Paragraph D(i) of this Agreement (i) does not exceed one hundred (100) beds and (ii) continues its operations as a nursing home facility on the land described on Exhibit B-1 attached to this Agreement and made a part hereto (the "Nursing Home Parcel"), Hospital shall not exercise its right to terminate this Agreement pursuant to Section 9(a), but only with respect to the Nursing Home Parcel. Hospital shall retain the right to terminate this Agreement pursuant to Section 9(a) with respect to the remainder of the Developer Parcel. Hospital shall also retain the right to terminate this Agreement with respect to the entirety of the Development Parcel, including without limitation, the Nursing Home Parcel, pursuant to

any other right that Hospital may have under this Agreement, at law or in equity, including without limitation under Section 7(a) or Section 10(e) hereof."

- 3. Except as herein expressly provided, The Agreement shall remain in all other respects unmodified and in full force and effect.
 - 4. This Amendment may be executed in any number of counterparts.
 - 5. Exhibits A-1 and B-1 are incorporated herein.

IN WITNESS THEREOF, Hospital and Bar K have caused this Amendment to be executed by persons duly authorized to execute the same effective as of the date first above written.

HOSPITAL:

Mountain	View	Hospital,	Inc.
			_

Name: W. Mark Kimbrough

Title: VO

BAR K:

Bar K Development, LL

By: / X / V / V / Name: Steven Dem

Title. Magazer

BD & E Properties, L.C.

Name: Steven Dewey

Title:

STATE OF TENDES				
COUNTY OF DOUG	ss: (<u>۵۵</u> ک			
acknowledged to me that th	known or ountain Viev	r satisfactorily provided in the satisfactorily provided in the satisfactories and satisfactories are satisfactories and satisfactories are satisfactories and satisfactories are satisfactories and satisfactories are satisf	roved to me to Utah corporat	be the ion, who
, .			_	ATTITUTE LEV WA
	Note	ary Public	in Ca	TENNOFE
STATE OF UTAH) : ss	My Commiss March 20	ion Expires), 2010	NOTARY PUBLIC
COUNTY OF UTAH)			COUNTINE COUNTINE
On this _/r day Dewey, known or satisfacto LLC, a Utah limited liabilit foregoing instrument in his	rily proved to y company, w capacity as ma	me to be the may ho acknowledge anager for said liver ary Public	RONDA HANSEN Notary Public State of Utah	C Development e signed the company.
STATE OF UTAH)	My Co	omm. Expires Feb 19 essional Way #3 Payson U	P, 2011 IT 84653
COUNTY OF UTAH	: ss)			
On this/s day of Dewey, known or satisfactors. L.C., a Utah limited liability foregoing instrument in his of	rily proved to company, when capacity as ma	me to be the man ho acknowledged an ager for said livery Public	nager of BD of to me that he	& E Properties, signed the company.

ENT 57972:2008 PG 4 of 16

Exhibit A-1

JOINT USE AGREEMENT Mountain View Hospital Lift Station

JOINT USE AGREEMENT Mountain View Hospital Lift Station

THIS JOINT USE AGREEMENT (this "Agreement") is made as of SEPT 161., 2007 (the "Agreement Date") by and between Mountain View Hospital, Inc., a Utah corporation, with an address of One Park Plaza, Nashville, Tennessee 37203, Attention: Real Estate Dept., hereinafter referred to as "Hospital" and Bar K Development, LLC, a Utah limited liability company, and BD&E Properties, LLC, a Utah limited liability company, both with an address of 39 Professional Way, Payson, Utah 84651, hereinafter referred to together as "Bar K"; under the following circumstances:

RECITALS

- A. Hospital owns and operates a wastewater lift station and ancillary improvements and facilities (collectively, the "<u>Lift Station</u>") located on the campus of Mountain View Hospital, Payson, Utah at the location shown on Exhibit A attached hereto and made a part of this Agreement.
- B. The Lift Station collects and pumps wastewater from Mountain View Hospital and all appurtenant medical office building(s) and improvements (collectively, the "Facility").
- C. At some undetermined time in the future, Hospital also intends to develop and construct on the Facility site a medical office building containing approximately 38,500 square feet (such building plus all ancillary improvements and facilities are referred to collectively in this Agreement as the "Future Hospital Improvements").
- D. Bar K intends to develop and construct on an approximately five-acre parcel of land adjacent to the Facility, which parcel is described on Exhibit B attached hereto and made a part hereof (the "Development Parcel") the following improvements: (i) a nursing home facility containing one hundred beds; and (ii) two medical office buildings containing approximately 18,000 square feet each (all of the foregoing plus all ancillary improvements and facilities are referred to collectively in this Agreement as the "Bar K Improvements").
- E. Bar K wishes to connect to and use the existing Lift Station in order to provide wastewater services to the Bar K Improvements at the approximate location shown on Exhibit C attached hereto and made a part hereof at State Route 198 and Highway 100 North (the "Connection Location") and Hospital is willing to permit such connection and use on the terms and conditions set forth in this Agreement.

THEREFORE, in consideration of the agreements and covenants set forth herein, Hospital and Bar K agree as follows:

Section 1. <u>Definitions</u>. In addition to any terms defined elsewhere in this Agreement, the following terms shall have the following meanings:

- (a) The "Hospital Average Daily Flow" as of the date of this Agreement is an average flow of 51,668 gallons per day for the Facility with a peak flow of 74 gallons per minute. The proposed Future Hospital Improvements are estimated and expected to add 2,537 gallons to the Hospital Average Daily Flow with an estimated additional 4 gallons per minute added to peak flow. The "Proposed Hospital Average Total Flow" after completion of the Future Hospital Improvements is estimated to be 54,205 gallons per day with an estimated peak flow of 78 gallons per minute. The actual Hospital Average Daily Flow after completion of the Future Hospital Improvements shall be adjusted by written amendment of this Agreement using "Winter Water Meter Data" (as defined below).
- (b) The estimated and expected "Bar K Average Daily Flow" for the Bar K Improvements after their completion is 33,893 gallons per day with an estimated average peak flow of 48 gallons per minute. The actual Bar K Average Daily Flow after completion of the Bar K Improvements shall be adjusted by amendment of this Agreement using Winter Water Meter Data.
- (c) "Winter Water Meter Data" shall mean the total metered water usage that contributes flow to the Lift Station during the months of December, January, and February during the first full calendar year after completion of the Future Hospital Improvements or the Bar K Improvements, as applicable.
- (d) The "Hospital Proportionate Share" shall be calculated by dividing the Hospital Peak Flow, on an average daily basis, by the sum of the Hospital Peak Flow, on an average daily basis, and the Bar K Peak Flow, on an average daily basis, and multiplying the result by 100. As of the date of this Agreement, the estimated Hospital Proportionate Share after completion of the Bar K Improvements, and after the completion of the Future Hospital Improvements is 62%.
- (e) The "Bar K Proportionate Share" shall be calculated by dividing the Bar K Peak Flow, on an average daily basis, by the sum of the Hospital Peak Flow, on an average daily basis, and the Bar K Peak Flow, on an average daily basis, and multiplying the result by 100. As of the date of this Agreement, the estimated Bar K Proportionate Share after completion of the Bar K Improvements and after the completion of the Future Hospital Improvements is 38%.

Section 2. Right to Connect to Lift Station. Hospital hereby grants to Bar K a non-exclusive license to connect to and use the Lift Station at the Connection Location for the provision of wastewater services to the Development

2

1600520 5

Parcel as is reasonably necessary in connection with the use and enjoyment of the Development Parcel and the Bar K Improvements for a term of forty-two (42) years (the "term of this Agreement") commencing on the Agreement Date, subject to Hospital's rights to terminate this Agreement set forth in Section 9 of this Agreement. Hospital shall continue to have the right to use the Lift Station site and the Connection Location for any purpose so long as the use of the Lift Station and the Connection Location by Bar K for the purposes permitted herein is not unreasonably impaired. Hospital shall retain sole ownership of the Lift Station.

Section 3. Maintenance and Operation. Hospital shall be responsible for maintaining the Lift Station in good operating condition and repair and shall make any and all repairs and replacements necessary to maintain the Lift Station in such condition and repair. In particular, without limiting the generality of the foregoing, Hospital will enter into a written agreement with a third-party operator, reasonably acceptable to both Hospital and Bar K, to operate and maintain the Lift Station as provided in this Agreement. The agreement between Hospital and such operator will provide that such operator will establish an annual operating budget and schedule for anticipated capital improvements and expenditures for the Lift Station, which shall include equipment repairs, upgrades and replacements and installation of metering devices for determining flow for improvements now and hereafter located on both the Facility site and the Development Parcel.

Bar K shall pay to Hospital the Bar K Section 4. Cost-Sharing. Proportionate Share of any and all costs of maintenance, repair, and replacements, including capital expenditures, of the Lift Station in monthly installments as At the establishment of the annual operating budget and capital expenditure schedule described in Section 3 above, Hospital shall estimate the Bar K Proportionate Share for the upcoming twelve (12) calendar month- period and shall provide monthly invoices to Bar K with the amount of the monthly installment payable hereunder. Bar K shall make such payment to Hospital no later than ten (10) days after receipt of such invoice. Hospital shall cause the Lift Station thirdparty operator to prepare an annual reconciliation of such costs no later than thirty (30) days after the end of each calendar year and provide such reconciliation to both Hospital and Bar K. Bar K shall pay any shortfall between the monthly installments of the estimated Bar K Proportionate Share and the actual Bar K Proportionate Share for the previous 12-month period to Hospital within thirty (30) days after receipt of the annual reconciliation statement. In the event that the actual Bar K Proportionate Share for the applicable period is less than the payments made by Bar K therefor, Bar K shall be entitled to a credit against upcoming payments of the estimated Bar K Proportionate Share for the next 12 months. Hospital shall pay and be responsible for the Hospital Proportionate Share of any and all such costs described in the first sentence of this Section 3.

3

Section 5. Further Improvements. In the event that either Hospital or Bar K construct any improvements on the Facility site or the Development Parcel, as applicable, other than the Future Hospital Improvements or the Bar K Improvements, respectively, that require increasing the capacity of the Lift Station, each party will pay and be responsible for any and all costs of increasing the Lift Station capacity as required for such party's improvements. Hospital and Bar K shall give the other party and the third-party Lift Station operator written notice no less than one hundred eighty (180) days before any increased Lift Station capacity is required. Bar K acknowledges and agrees that nothing in this Section 5 shall operate or be construed to negate Hospital's right to terminate this Agreement as provided in Section 9.

Section 6. <u>Indemnification</u>. (a) Bar K shall indemnify and save Hospital harmless from and against any and all loss, costs, damages, expenses, liabilities, demands and causes of action and any expenses incidental to the defense thereof incurred by Hospital arising as a result of the exercise, use or enjoyment of any rights or easements granted or declared herein for the benefit of Bar K or arising out of any violation by Bar K of the terms or provisions of this Agreement. Furthermore, Bar K shall indemnify and save Hospital harmless from and against any and all loss, costs, damages, expenses, liabilities, demands and causes of action and any expenses incidental to the defense thereof by Bar K resulting from any injury or death of persons or damage to property which occurs on the Connection Location in connection with or in any manner directly or indirectly grows out of the use, occupancy or condition of the Connection Location; provided, however, that Bar K shall not so indemnify and save harmless Hospital from the consequences of any of Hospital's negligent acts or omissions.

(b) Hospital shall indemnify and save Bar K harmless from and against any and all loss, costs, damages, expenses and liabilities, demands and causes of action and any expenses incidental to the defense thereof incurred by Hospital arising as a result of Hospital's default of its obligations under this Agreement; provided, however that Hospital shall not so indemnify and save harmless Bar K from the consequences of any of Bar K's negligent acts or omissions.

Section 7. <u>Default</u>. (a) In the event that Bar K is in breach of its obligations under this Agreement, Hospital shall provide written notice of such breach to Bar K. Upon the expiration of ten (10) days following the giving of such notice, if Bar K has failed to cure such breach or (ii) in the case of a breach (other than the payment of money) which by its nature cannot be completely cured within such 10-day period, does not within such period commence to cure the breach and diligently pursue and complete the cure in a reasonable period of time, then in either such event, Hospital may do all things necessary or desirable to remedy such breach and perform the obligations of Bar K that have not been fully or promptly performed. Bar K shall immediately on demand reimburse Hospital for all costs and expenses incurred by Hospital in connection with the cure of any breach of Bar

K f its obligations under this Agreement, plus interest at the highest rate permitted under applicable law.

In the event that Hospital is in breach of its obligations under this Agreement, Bar K shall provide written notice of such breach to Hospital. Upon the expiration of ten (10) days following the giving of such notice, if Hospital has failed to cure such breach or (ii) in the case of a breach (other than the payment of money) which by its nature cannot be completely cured within such 10-day period, does not within such period commence to cure the breach and diligently pursue and complete the cure in a reasonable period of time, then in either such event, Bar K may do all things necessary or desirable to remedy such breach and perform the obligations of Hospital that have not been fully or promptly performed. Hospital shall immediately on demand reimburse Bar K for all costs and expenses incurred by Bar K in connection with the cure of any breach of Hospital of its obligations under this Agreement, plus interest at the highest rate permitted under applicable law.

Section 8. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given when actually delivered if given by hand delivery or transmitted by overnight courier service, or if mailed when deposited in a United States Post Office, registered or certified mail, postage prepaid, return receipt required; provided that the same is delivered to or addressed as follows:

If to Bar K:

39 Professional Way Payson, Utah 84651

With a copy to:

Mr. Greg Barrick 111 E. Broadway, #900 Salt Lake City, Utah 84140

If to Hospital:

Mountain View Hospital 1000 East Highway 6 Payson, Utah 84651-1600

Attention: Chief Executive Officer

With copies to:

Mountain View Hospital, Inc.

One Park Plaza

Nashville, Tennessee 37203 Attention: Real Estate Dept.

1600620.5

5

Carla F. Fenswick, Esq. Waller Lansden Dortch & Davis, LLP 511 Union Street, Suite 2700 Nashville, Tennessee 37219

or such other address as either party may from time to time specify in writing to the other.

Section 9. <u>Early Termination</u>. (a) Notwithstanding any provision of this Agreement seeming to the contrary, Hospital shall have the right to terminate this Agreement upon one hundred eighty (180) days written notice to Bar K at any time during the term of this Agreement if Bar K uses any building or improvement located on the Development Parcel, whether or not any such building or improvement is part of the Bar K Improvements, in a manner or for any purpose that would directly compete with the Facility.

(b) "Directly compete" shall mean (i) an acute care hospital, medical or surgical or specialty hospital, (ii) a facility providing outpatient or inpatient surgery services, (iii) a facility providing birthing services or (iv) a facility providing "Ancillary Medical Services or Facilities" (as defined herein). As used herein, an "Ancillary Medical Care Service or Facility" shall mean and include testing for diagnostic or therapeutic purposes, provision or operation of a laboratory (including, without limitation, a pathology laboratory or a clinical laboratory), diagnostic imaging services (which include, without limitation, the following testing facilities: fluoroscopy, x-ray, plane film radiography, computerized tomography (CT) ultrasound, radiation therapy, mammography and breast diagnostics, nuclear medicine testing and magnetic resonance imaging), and sleep laboratory testing Notwithstanding the foregoing, however, Hospital's right to terminate this Agreement shall not be triggered in the event that a licensed physician (a "Physician") who conducts a medical practice at the Development Parcel provides laboratory, diagnostic imaging services or any other diagnostic or treatment services or procedures in his or her office to any such Physician's own patients, so long as such services are merely ancillary and incidental to such Physician's primary medical practice and do not constitute the Physician's primary medical practice or specialty nor the predominant services rendered by such Physician to Physician's patients and so long as such patients for whom such laboratory or diagnostic imaging services are performed are not referred to such Physician primarily for the purpose of obtaining such laboratory or diagnostic imaging services. Notwithstanding the foregoing, the nursing home facility described in Recital Paragraph D and any skilled nursing and rehabilitation services and facilities provided from such nursing home facility, shall not be considered a directly competing use of the Development Parcel.

6

Section 10. <u>Miscellaneous</u>. (a) <u>No Dedication</u>. Nothing contained herein shall be construed or deemed to constitute a dedication, express or implied, of any real property to or for any public use or purpose whatsoever.

- (b) <u>Compliance with Laws</u>. In connection with the use and enjoyment of the licenses and rights granted and declared herein for the benefit of Bar K, Bar K shall comply with all applicable laws, regulations, orders and requirements of all governmental entities having jurisdiction over the same, whether federal state or local.
- (c) Amendment. This Agreement or any provisions hereof, or any agreements, covenants and conditions contained herein, may be terminated, extended, modified or amended, but only by a written instrument duly executed by Hospital and Bar K.
- (d) Governing Law. This Declaration shall be governed, construed and enforced in accordance with the laws of the State of Utah.
- (e) Regulatory Matters. (i) Hospital and Bar K enter into this Agreement with the intent of conducting their relationship and implementing the agreements contained herein in full compliance with applicable federal, state and local law, including without limitation, the Medicare/Medicaid Anti-Kickback statute (the "Anti-Kickback Law") and Section 1877 of the Social Security Act (the "Stark Law"), as amended. Notwithstanding any unanticipated effect of any of the provisions of this Agreement, neither party will intentionally conduct itself under the terms of this Agreement in a manner that would constitute a violation of the Anti-Kickback Law or the Stark Law. Without limiting the generality of the foregoing, Hospital and Bar K expressly agree that nothing contained in this Agreement shall require either party to refer any patients to the other, or to any affiliate or subsidiary of the other.
- (ii) If any legislation, regulation or government policy is passed or adopted, the effect of which would cause either party to be in violation of such laws due to the existence of any provision of this Agreement, then Landlord and Tenant agree to negotiate in good faith for a period of one hundred eighty (180) days to modify the terms of this Agreement to comply with applicable law. Should the parties hereto fail to agree upon modified terms to this Agreement within this time, then either Bar K or Hospital may immediately terminate this Agreement by giving written notice to the other party.
- (iii) Bar K represents and warrants to Hospital that Bar K and all persons and entities with an ownership or beneficial interest in Bar K (i) are not currently excluded, debarred or otherwise ineligible to participate in Medicare or any federal health care program under section 1128 and 1128A of the Social Security Act or as defined in 42 U.S.C. § 1320a-7b(f) (the "Federal Health Care Programs"); (ii) have

7

not been convicted of a criminal offense related to the provision of healthcare items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in any Federal Health Care Program; and (iii) are not under investigation or otherwise aware of any circumstances that may result in Bar K being excluded from participation in any Federal Health Care Program. The foregoing representation shall be an ongoing representation and warranty during the term of this Agreement and Bar K shall immediately notify Hospital of any change in the status of the representation and warranty set forth in this Section, at which time Hospital will have the right to immediately terminate this Agreement.

- (iv) For purposes of this Section of this Agreement, "protected health information", or PHI, shall have the meaning defined by the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Subparts A and E of Part 164 (the "Privacy Standards"), as promulgated by the Department of Health and Human Services ("HHS") pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The parties agree that neither Bar K nor its contractors, subcontractors or agents shall need access to, nor shall they use or disclose, any PHI of Hospital. However, in the event PHI is disclosed by Hospital or its agents to Bar K, its, contractors, subcontractors or agents, regardless as to whether the disclosure is inadvertent or otherwise, Bar K agrees to take reasonable steps to maintain, and to require its contractors, subcontractors and agents to maintain, the privacy and confidentiality of such PHI. The parties agree that the foregoing does not create, and is not intended to create, a "business associate" relationship between the parties as that term is defined by the Privacy Standards.
- (f) Hospital and Bar K may each assign this Agreement or any rights, obligations or interest that each may have hereunder to any other person or entity without the consent of the other party.
- (g) <u>Counterparts</u>. This Agreement may be executed in any number of counterparts.

[Signatures appear on the following page]

8

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, effective as of the date first above written.

HOSPITAL:

Mountain View Hospital, Inc. By: W. Mullund
W. Mark Kimbrough
Vice President
BAR K:
Bar K Development, LLC
Ву:
Name:
Title:
BD&E Properties, LLC
By:
Name:
Title:

q

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, effective as of the date first above written.

HOSPITAL:
Mountain View Hospital, Inc.
By: W. Mark Kimbrough
Vice President
BAR K:
Bar K Development, LLC
By: STEVEN DELICE
Name: STEVED DESCY Title: Spinipal of Manager
BD&E Properties, LLC
By:
Name: Slever - CE.O
- /

Legal Description Nursing Home Facility

A PARCEL OF LAND LYING IN THE SOUTHWEST 1/4 OF SECTION 10, AND THE SOUTHEAST 1/4 OF SECTION 9, TOWNSHIP 9 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, UTAH COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE BRASS CAP MONUMENTING THE SOUTHWEST CORNER OF SAID SECTION 10, THENCE N. 89°31'31" E. A DISTANCE OF 401.83 FEET ALONG THE SECTION LINE; THENCE NORTH A DISTANCE OF 499.67 FEET TO THE REAL POINT OF BEGINNING.

THENCE N. 89°39'14" W. A DISTANCE OF 353.98 FEET TO A POINT OF CURVATURE OF A 18.00-FOOT RADIUS NON-TANGENT CURVE TO THE LEFT; THENCE NORTHEASTERLY A DISTANCE OF 13.30 FEET ALONG THE ARC OF SAID CURVE HAVING A CENTRAL ANGLE OF 42°20'42" AND A CHORD THAT BEARS N. 20°59'49" E. A DISTANCE OF 13.00 FEET; THENCE N. 00°00'01" W. A DISTANCE OF 177.22 FEET TO A POINT OF CURVATURE OF A 5.00 FOOT RADIUS TANGENT CURVE TO THE LEFT; THENCE NORTHWESTERLY A DISTANCE OF 7.85 FEET ALONG THE ARC OF SAID CURVE HAVING A CENTRAL ANGLE OF 89°58'58" AND A CHORD THAT BEARS N. 44°59'36" W. A DISTANCE OF 7.07 FEET; THENCE N. 89°59'57" W. A DISTANCE OF 321.45 FEET: THENCE N.00°01'56" W. A DISTANCE OF 31.00 FEET: THENCE S. 89°59'57" E. A DISTANCE OF 321.29 FEET TO A POINT OF CURVATURE OF A 5.00-FOOT RADIUS TANGENT CURVE TO THE LEFT; THENCE NORTHEASTERLY A DISTANCE OF 7.85 FEET ALONG THE ARC OF SAID CURVE HAVING A CENTRAL ANGLE OF 89°58'58" AND A CHORD THAT BEARS N. 44°59'57" E. A DISTANCE OF 7.07 FEET: THENCE N. 00°00'00" E. A. DISTANCE OF 179.69 FEET; THENCE S. 89°42'47" E. A DISTANCE OF 185.00 FEET; THENCE N. 45°00'00" E. A DISTANCE OF 236.73 FEET; THENCE S. 00°17'13" W. A DISTANCE OF 578.66 FEET TO THE REAL POINT OF BEGINNING.

