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~~SANITARY SEWER SERVICE AND WATER UTILITY AGREEMENT~~

THIS SANITARY SEWER SERVICE AND WATER UTILITY AGREEMENT ("Agreement") is made this 7<sup>th</sup> day of October, 2010 by and between the Danion Run Conservancy District ("District") and Porter Hospital, LLC ("Hospital")

WHEREAS, the Hospital is developing a certain parcel of real estate consisting of approximately 105 acres generally located at the northwest intersection of State Road 49 and U.S. Highway 6 in Porter County, Indiana ("Property");

WHEREAS, the Hospital requires water and sanitary sewer service for the development of the Property as a new hospital, including ancillary facilities, estimated to be 225 beds ("Project"); and

WHEREAS, the District has a sanitary sewer and water utility infrastructure system ("District's System") by and through the City of Portage and Indiana American Water Company respectively which system renders utility services capable of servicing the Property and the Project;

WHEREAS, the Hospital desires to connect to and utilize the District's System for the Project as the exclusive provider of sanitary sewer and water service to the Project;

WHEREAS, the purpose of this Agreement is to establish the terms and conditions under which the Hospital will receive sanitary sewer and water utility services from the District and establish the respective responsibilities of the parties for maintenance of the District's System.

NOW THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties enter into this Agreement according to the following terms:

1. Incorporation of Recitals. The parties agree that the above and foregoing recitals are true and correct and are hereby incorporated into and made a part of this Agreement.
2. Effective Date and Term. The Effective Date of this Agreement shall be the date first set forth above. The term of this Agreement shall be perpetual and neither party may terminate this unless and until all bonds or similar financing issued by, under or through the District related to its infrastructure and the debt associated therewith are paid in full and said bonds and/or financing is discharged and released as an obligation of the District.
3. Provision of Sanitary and Water Service. Upon completion of the infrastructure contemplated herein and at all times thereafter, the District shall provide sanitary sewer and water utility service to the Project. At all times throughout the term of this Agreement, the Hospital agrees that the District shall be the exclusive provider of water and sewer service for the Property.

4. District Capacity and Reservation of Capacity. The District acknowledges that it has sufficient capacity to render water and utility service to the Property for the Project and can service the Project immediately upon connection by the Hospital to the District's System. The District's acknowledgment is based upon its understanding that the Project will consist of approximately 225 beds, including ancillary facilities, and such usage will be the equivalent of approximately 145 equivalent dwelling units ("EDU's"). Should the number of EDU's exceed said amount, the Hospital shall promptly provide the District updated information so that verification of actual use can be generated. The District will reserve capacity sufficient for the Hospital's use of the Property for the Project.

5. Utility Service Route. The route for utility services contemplated by this Agreement has been determined by the District and is generally depicted on Exhibit "A" attached hereto. The route of sanitary sewer service shall commence on Meridian Road and through the subdivision commonly known as Timberland Farms and through the property commonly known as the "Hanrahan property" (St. Andrews) which shares a common property line with the Property on the western line of the Property. The District shall participate in the coordination with the owners of Timberland Farms and the Hanrahan property extension of utilities and participate, utilizing its right of Eminent Domain, if needed, in securing from each appropriate easements. The extension of water utilities shall be in and along the right-of-way of US Highway 6. All costs and expenses of obtaining easements, right-of-way and permitting for the same shall be the responsibility of the Hospital, including, but not limited to, costs associated with the District's exercise its Eminent Domain powers. ✓ SEE ATTACHED EASEMENTS

6. Construction and Costs of Infrastructure. The infrastructure plans ("Plans") for the extension of utilities to the Project ("New Infrastructure") have been designed by the Duneland Group, Inc. ("District Engineer") and shall be completed in accordance with the plans prepared by the District Engineer reviewed and approved by the Indiana Department of Environmental Management ("IDEM") for construction of the New Infrastructure. The parties recognize that during the course of construction certain changes to the Plans may be necessary to due matters outside the control of the parties, including, but not limited to, unforeseen soil conditions, and that due to such conditions, changes to the Plans to accommodate the conditions may be made. Construction of the New Infrastructure shall be completed by the Hospital at its sole cost and expense. Upon completion of the New Infrastructure by the Hospital and inspection and approval of the New Infrastructure by the District Engineer, the New Infrastructure shall be dedicated to and ownership of the New Infrastructure shall be vested in the District. The Hospital shall guarantee the New Infrastructure for a period of one (1) year following acceptance by the District. Upon acceptance subject however to the foregoing guaranty, the District shall be responsible for the maintenance, repair and replacement of the New Infrastructure up to and including the westernmost lift station shown on the Plans. The Hospital shall complete the work associated with water utility service on or before December 1, 2010 and sewer utility service on or before May 1, 2011; provided, however, the Hospital shall be granted reasonable extensions of time in the event of fire, explosion, accident, acts of governmental body, flood, strike, labor shortage, war, act(s) of terrorism, inability to secure suitable material, components, parts, equipment, machinery, fuel, power or transportation, act of God, failure of telephone, communications systems, severe weather, or any other cause or condition beyond its



reasonable control. Similarly, the Hospital shall not be liable for any delay in performance directly or indirectly as the result of Avian or Swine Influenza, or any other similar epidemic or pandemic.

7. Recapture Of New Infrastructure Costs. As a material inducement to the District, the Hospital agrees that it will not seek to recover any costs or expenses associated with the New Infrastructure and hereby assigns any and all rights, claims or interests in and to the New Infrastructure and any potential recapture of costs associated with the New Infrastructure to the District. Upon completion of the New Infrastructure, the Hospital will provide the District with a certified line item statement identifying the costs of the New Infrastructure and agrees to cooperate with the establishment of a recapture area to and for the benefit of the District. The Hospital estimates that the cost of construction for the New Infrastructure is approximately One Million Four Hundred Thousand Dollars (\$1,400,000.00). The terms and conditions of any recapture agreement shall be made solely by the District, provided that the recapture agreement does not impose any payment liability or obligation on the Hospital.

8. Annexation Into District Not Required. In lieu of annexing the Property into the District, the Hospital agrees that it will pay in two equal payments annually an allocation charges to the District for the use of the District's System. It is the intent of the parties that the Hospital pay on equal footing with and proportionate to homeowners in the District and predicated on an equivalent dwelling unit ("EDU") factor and an average single family residential District tax bill. The semi-annual payments shall be due and payable on May 10 and November 10 of each calendar year with the first payment being due and payable on November 10, 2011 equaling one-half of the 2011 calendar year payment. Commencing in the calendar year 2012, the Hospital shall begin making semi-annual payments in May and November as contemplated by this Agreement and in a like manner throughout the term of this Agreement.

Pursuant to IDEM standards, the Hospital at 225 beds equals 145 EDU's [(225 beds x 200 gallons per day) ÷ 310 gallons per day] ("Initial Hospital EDU"). Upon the District learning of the average single family residential tax bill for the tax year 2010 payable in 2011, the District shall notify the Hospital in writing of the annual payment amount which amount shall be the product of the Initial Hospital EDU and the average single family residential tax bill. The Initial Hospital EDU shall remain unchanged until such time as the hospital facility has been open and operating as a hospital for a period of one (1) year at which time the number of EDU's shall be based on actual flow figures determined through the water meter(s) for the Project. The number of EDU's shall be adjusted annually based on the twelve (12) month average flow for the Project with one (1) EDU being equal to 310 gallons of water per day for a single family residential dwelling unit.

9. Compliance with District Ordinances and Regulations. Except as otherwise provided in this Agreement, the Hospital shall be charged and shall pay all usual and customary allocation fees, tap fees, and other charges in accordance with the District's rules, regulations, use and rate ordinances and the Act, each as amended from time to time.



10. Utility Service Charges. The Hospital agrees to pay during the term of this Agreement the charges and fees assessed by the District and contained herein. The Hospital shall be billed in accordance with the then current rates and charges of the District pursuant to its ordinances and that by entering into this Agreement, the Hospital agrees to abide by and otherwise conform its activities to the District's sewer, water and use ordinances, rules, resolutions in effect and which may from time to time be amended by the District. The District shall not amend any rate structure without first having provided the Hospital written notice of any hearing at which the District will consider such an amendment. The District's sewer and water rate ordinances as well as its use are incorporated into this Agreement by reference and are made a part of this Agreement as though fully set forth herein. The Hospital agrees that it will meet and consult with the District prior to filing a protest of any rate or use amendments.

11. Connection Fee and District Expenses. Notwithstanding anything to the contrary in this Agreement, the District agrees to charge the Hospital and the Hospital agrees to pay the District a connection and tap fee of One Hundred Thousand Dollars (\$100,000.00) ("Connection Fee"). The ~~of~~ balance of the District's usual and customary connection and tap fees shall be waived. The ~~two~~ Connection Fee shall be due and payable concurrently with the District providing the Hospital an allocation letter necessary for submittal of the Hospital's plans to the State of Indiana for a permit to construct the New Infrastructure. The Hospital shall be required to pay all connection, allocation and tap fees required by the City of Portage and/or Indiana American Water Company in accordance with the District's agreements with the City of Portage and/or Indiana American Water Company. The Hospital agrees to pay the District's legal, administrative and engineering expenses incurred in connection preparation and negotiation of this Agreement and matters related thereto in an amount not to exceed Twenty Five Thousand Dollars (\$25,000.00).

12. Governing Law and Severability. This Agreement shall in all respects be governed by, and enforced and interpreted in accordance with, the laws of the State of Indiana. The invalidity of any provision of this Agreement shall not impair the validity of any other provision. If any provision of this Agreement is determined by a Court of competent jurisdiction to be unenforceable, that provision shall be deemed severable and the Agreement may be enforced with that provision severed or modified by the Court.

13. Amendments, Agreement, Elections, Waivers and Consents. Any and all amendments and other agreements with respect to this Agreement shall be made by an instrument or instruments in writing signed by and on behalf of both parties and no such amendment or other agreement shall be effective unless and until so made. Any and all elections, waivers and consents with respect to this Agreement shall be made or given by an instrument or instruments in writing, and no such election, waiver or consent shall be effective unless and until so made or given by such an instrument in writing.

14. Successors and Assigns. This Agreement shall inure to the benefit of, and be binding upon and enforceable against the parties to this Agreement and their respective successors and assigns, but this Agreement shall not be assignable by either party without the prior written consent of the other.

15. Entire Agreement and Proper Authority. This Agreement, along with the Exhibits hereto, constitutes the entire agreement between the parties hereto with respect to the transactions contemplated herein, and supersedes all negotiations, representations, warranties, offers, contracts and communications prior to the date hereof. Each person signing this Agreement represents and warrants that he/she is duly authorized to execute and deliver this Agreement and bind the party for whom they are signing.

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

17. Notices. Any notices required hereunder shall be in writing, signed by the party serving the same, deposited in the registered or certified U.S. mail, return receipt requested, postage prepaid, or sent by overnight carrier, fee prepaid, and shall be deemed delivered on the second business day after such deposit or on the first business day after being sent by such overnight carrier to the following:

District: Damon Run Conservancy District  
c/o Board of Directors  
P.O. Box 472  
Valparaiso, Indiana 46384

Hospital: Porter Hospital, LLC  
c/o Chief Executive Officer  
814 LaPorte Avenue  
Valparaiso, Indiana 46383

or to such other address as any party may furnish the other in writing.

18. Further Assurances. Promptly upon request from time to time of either party, the other party shall do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged or delivered, to or at the direction of such party, all further acts, transfers, assignments, powers and other documents and instruments as may be so requested to give effect to the transactions contemplated hereby, including, but not limited to supporting petitions, application or requests to any reasonably necessary governing body or agency, municipality, political subdivision or agency thereof.

19. Jurisdiction, Default and Attorney's Fees. This Agreement shall be interpreted under the laws of the State of Indiana, without regard to any conflict of laws provision. Any action to enforce any provision of the Agreement shall be filed in the State courts of Porter County, Indiana. Each party retains all rights and remedies, at law or in equity, regarding this Agreement. The court shall award to the prevailing party its court costs and attorneys' fees incurred in enforcing this Agreement. For purposes of this Agreement, a prevailing party shall include, without limitation, a party who brings an action against the other party by reason of the other party's breach or default and obtains substantially the relief sought, whether by compromise, settlement or judgment.



ALL OF WHICH HAVING BEEN AGREED TO by and between these parties on the date first set forth above.

District:

Damon Run Conservancy District

By: [Signature]

Printed: Chad Littlewood

Title: Secretary

ATTEST:

By: [Signature]

Printed: Jennifer Beauchamp

Title: Treasurer

Hospital:

Porter Hospital LLC

By: [Signature]

Printed: \_\_\_\_\_

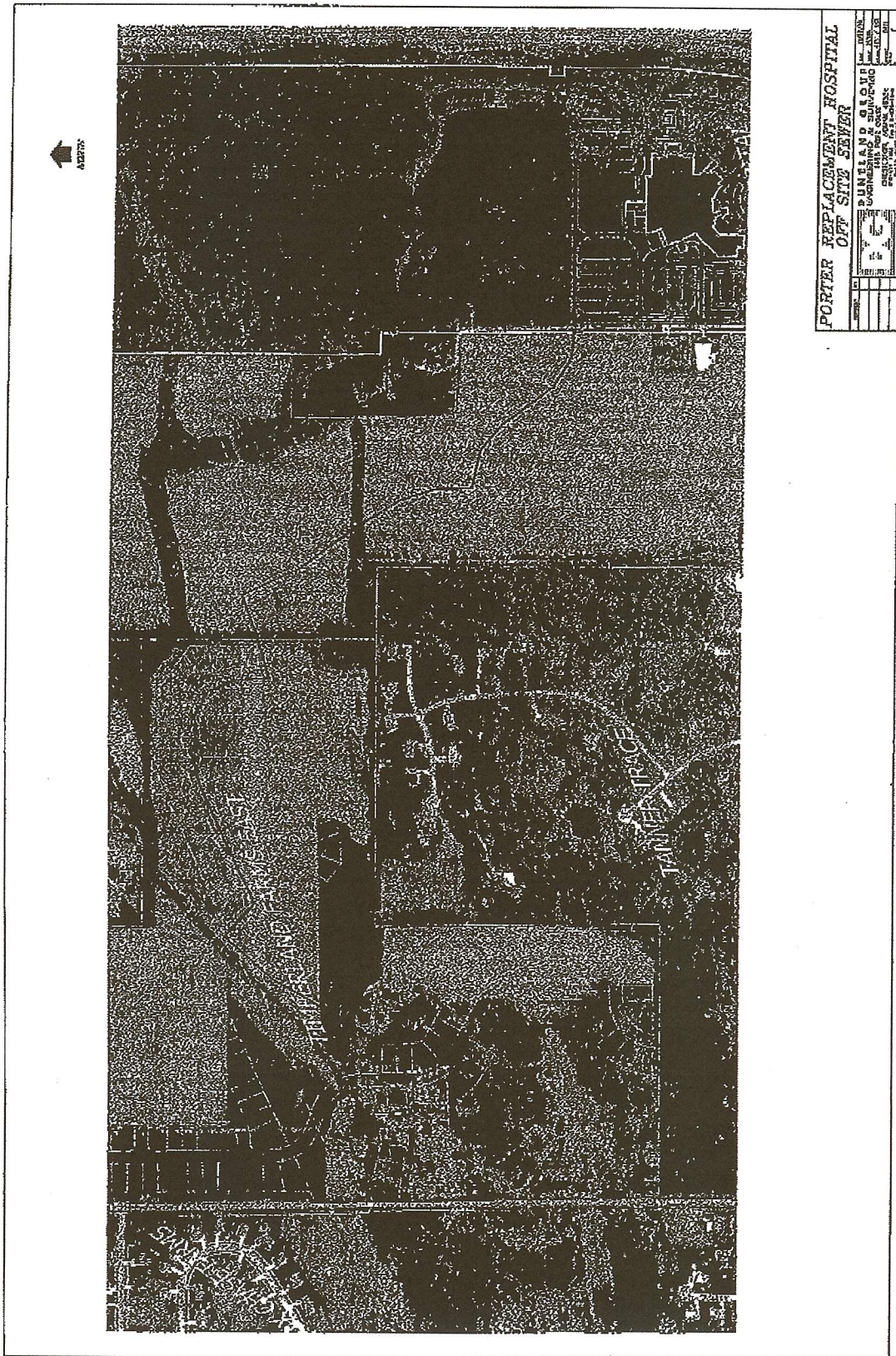
Title: \_\_\_\_\_

ATTEST:

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

Printed: \_\_\_\_\_

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



PORTER REPLACEMENT HOSPITAL OFF SITE SEWER

DATE	NOV 11 2010
BY	CHS
CHECKED BY	CHS
SCALE	AS SHOWN
PROJECT NO.	3677
SHEET NO.	8

Exhibit A



ALL OF WHICH HAVING BEEN AGREED TO by and between these parties on the date first set forth above.

District:

Damon Run Conservancy District

By: Bernard Mady  
Printed: Bernard Mady  
Title: Chairperson

ATTEST:

By: Jennifer Beauchamp  
Printed: Jennifer Beauchamp  
Title: Treasurer

Hospital:

Porter Hospital, LLC

By: [Signature]  
Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Title: \_\_\_\_\_