POTTER COUNTY, TEXAS
AND
BSA HOSPITAL, LLC

CHAPTER 381 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This CHAPTER 381 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT (the "Agreement") is made and entered into by and between POTTER COUNTY, TEXAS, a political subdivision of the State of Texas ("Potter County"), and BSA HOSPITAL, LLC ("Company"), a Texas limited liability company, each of which may be singularly referred to as "Party" and jointly referred to as "Parties," for the purposes and considerations stated below.

WHEREAS, the Company has applied to Potter County for financial assistance to construct a new, approximately 50,000 square feet cancer center, which will house radiation therapy treatment rooms utilizing state-of-the-art treatment technologies and methodologies, and will also include a technology corridor, new infusion bays, strategic and flexible meeting and collaboration spaces, improved spaces for patient families and visitors, and additional support services ("Project" or "Center"); and

WHEREAS, Potter County has the authority under Article 52-a of the Texas Constitution and Chapter 381 of the Texas Local Government Code ("Chapter 381") to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within Potter County; and

WHEREAS, Potter County desires to provide, pursuant to Chapter 381, an incentive to the Company to construct and develop the relocation/expansion of cancer treatment facility in this community; and

WHEREAS, Potter County has determined that the Project is also desirable for the redevelopment of vacant and unused property; and

WHEREAS, Potter County has also determined that a grant of funds to the Company will serve the public purpose of promoting local economic development, and stimulating business and commercial activity within Potter County, and creating and retaining jobs.

NOW THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the Parties.

SECTION 2. PROGRAM APPROVED.

The Potter County Commissioners Court hereby establishes a Chapter 381 economic development program (the "Program") to facilitate the construction and development of the Project and determines that this Agreement will effectuate the purposes of the Program, and that the Company's performance of its obligations herein will promote local economic development and stimulate business and commercial activity in Potter County.

SECTION 3. TERM.

This Agreement shall be effective as of the Effective Date for a period of ten (10) years and shall terminate when all terms and conditions of this Agreement have been fulfilled unless terminated earlier pursuant to the terms of this Agreement.

SECTION 4. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement:

"Agreement" means this Chapter 381 Economic Development Program Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.

"Certificate of Occupancy" means an approval issued by the City of Amarillo after final inspection reflecting that construction of the Improvements has been completed in conformance with all appropriate City codes and requirements.

"Potter County" means Potter County, Texas, whose address for the purposes of this Agreement is: Potter County Judge, 500 S. Fillmore, Room 103, Amarillo, Texas 79101.

"Company" means BSA Hospital, LLC, a Texas limited liability company, authorized to do business in Texas, whose address for the purposes of this Agreement is 1500 Wallace Blvd, Amarillo TX 79106.

"Effective Date" means the last date this Agreement is signed by either Party.

"Event of Default" means and includes any of the Events of Default set forth below in the section entitled "Events of Default."

"Force Majeure" means any act of God or the public enemy, war, riot, civil commotion, fire, explosion or flood, and strikes or other act beyond the reasonable control of the Parties, but not including lack of funds.

"Improvements" means the completed construction of a new, approximately 50,000 square feet cancer center, which houses radiation therapy treatment rooms, a technology corridor, new infusion bays, strategic and flexible meeting and collaboration spaces, improved spaces for patient families and visitors, and additional support services, all on a site described on EXHIBIT A, and pursuant to the Concept Plan attached hereto as Exhibit B, with a required minimum new

investment of not less than $20,000,000 for construction, and installation of fixed machinery and equipment with a value of not less than $6,700,000.

"Job" or position means a full-time job or position requiring a minimum of 2080 hours of work per year, including allowance for vacation and sick leave. Individual salary or wages must equal at least the federal minimum wage or as otherwise specified in this Agreement. Total hours of all part-time employees shall be combined and divided by 2080 to determine the number of full-time job equivalents provided by part-time employees. This term includes only employment at the Center and not independent contractors unless specifically provided for in this Agreement. The term includes employees of BSA Hospital, LLC, affiliates and subsidiaries employed in the Center.

"Project" means the design, construction, and operation of cancer treatment center described as "Improvements" and on Exhibits A & B.

"Program Grant" or "Program Grant Payment" means the economic development grants to be paid by Potter County to the Company in accordance with this Agreement.

"Property" means that real property on which the Project is to be located and being more particularly described on the attached Exhibit A.

"Property Tax increment" means the difference in Potter County ad valorem property tax revenue on the Property between the year in which this Agreement was approved (being 2019 and using the PRAD appraised value for that year as the base value) and January 1 of each subsequent tax year during the term of this Agreement.

"Property Taxes Paid" means the total amount of ad valorem property tax revenue paid to and received by Potter County, generated by the Project.

SECTION 5. OBLIGATIONS OF COMPANY.

The Company covenants and agrees with Potter County that, while this Agreement is in effect, it shall comply with the following terms and conditions, which are prerequisites to being eligible for a grant(s) from Potter County:

(1) Completion of Improvements. The Company agrees that it must receive a building permit and all necessary financing and governmental approvals no later than December 31, 2019; and Company further agrees that the Improvements will be completed and Company will receive a Certificate of Occupancy no later than December 31, 2021. If requested in writing by the Company, Potter County may extend these deadlines, if in Potter County's reasonable discretion Potter County determines that an extension is warranted upon (a) an event of Force Majeure that suspends construction of the Improvements for a period of time such as to prevent the Improvements from receiving the Certificate of Occupancy within the time specified above; (b) disruption due to construction of infrastructure improvements by Potter County for a period of time such as to prevent the Improvements from timely receiving the Certificate of Occupancy; or (c) Company and Potter County mutually agree to one (1) extension period of not more than 120 days for convenience of

both parties. Failure or refusal to timely complete the Improvements as required by this Agreement, including the minimum capital investment, shall be considered an Event of Default under this agreement.

(2) Jobs. Within 90 days following the opening of the Center for business with the public, and continuing for the duration of this Agreement, the Company shall maintain seventy (70) existing employees (with an annual payroll of not less than $12,000,000). Additionally, within twelve (12) months following the opening of the Center for business with the public, and continuing for the duration of this Agreement, the Company shall create a minimum of seven (7) new full time employee positions with an annual payroll of not less than $600,000 each year. For the calculation of new full time employees, any employees hired after the effective date of this Agreement shall qualify toward the minimum of seven (7) required.

(3) Performance. The Company agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between the Company and Potter County.

(4) Undocumented Workers. The Company certifies that in accordance with Chapter 2264 of the Texas Government Code the Company does not and will not knowingly employ an undocumented worker in carrying out its obligations under this Agreement. If during the Term of this Agreement, the Company is convicted of a violation under 8 U.S.C. § 1324a (f), the Company will repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of the prime rate published in the *Wall Street Journal* plus two percent (2%) per annum, not later than the 120th day after the date Potter County notifies the Company of the violation.

(5) Taxes. During the term of the Agreement, the Company shall timely pay all ad valorem taxes and all other taxes and charges due by the Company to Potter County or other governmental entities (to the extent such is not being contested in good faith). Failure or refusal to do so shall constitute a default of this Agreement by the Company.

SECTION 6. OBLIGATIONS OF POTTER COUNTY.

A. Program Grant Payments. Upon verification of the Company's timely and proper performance of its Obligations in Section 5 of this Agreement, Potter County shall pay to the Company certain grants according to the following terms:

(1) Annually reimburse the Company a percentage of the annual Property Tax Increment for a period of ten (10) years commencing on the date the first Program Grant Payment is paid to the Company, as follows:

- Years 1-3 at 90% of the Property Tax Increment
- Years 4-6 at 70% of the Property Tax Increment
- Years 7-8 at 60% of the Property Tax Increment
- Years 9-10 at 50% of the Property Tax Increment

(2) The Company shall furnish evidence reasonably satisfactory to Potter County, on or before March 1 of the year following issuance of the Certificate of Occupancy for the Improvements, and on or before March 1 of each year thereafter during the Term of this Agreement, that the Company has performed the Jobs requirement of this Agreement, the Property Taxes Paid requirement, and all other Potter County charges or other fees due and owing, and that all such taxes and fees for the preceding year have been paid in full (to the extent such is not being contested in good faith). Potter County will thereafter within 30 days pay the Program Grant Payment that is due to the Company.

(3) Partial Compliance. In the event the Company has not complied with the Jobs obligation of Section 5 for a particular year, then the annual Program Grant Payment to the Company for that year may be reduced by the same percentage that the Company is short of the Jobs obligation stated in Section 5. Once a reduced Program Grant Payment is made for partial compliance for a particular year, then the Company will be considered to have satisfied the requirements for jobs for that year, if in compliance with all other conditions of this Agreement.

B. Enterprise Project Support. If requested by the Company, Potter County commits to support the Company in a Texas Enterprise Project nomination.

SECTION 7. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

(1) Default. Default shall occur upon a failure of the Company or Potter County to comply with or to perform any term, obligation, covenant or condition contained in this Agreement, or in any related documents, and to cure such failure within thirty (30) days after written notice from Potter County or the Company, as the case may be, describing such failure, or if such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if the Company or Potter County fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such failure.

(2) False Statements. Default shall occur in the event that any written warranty, representation or statement made or furnished to Potter County by the Company or by Potter County to the Company under this Agreement, or any document(s) related hereto are furnished by the Company or Potter County to the other are false or misleading in any material respect, either now or at the time made or furnished, and the furnishing Party fails to cure same within thirty (30) days after written notice from the receiving Party describing the violation, or if such violation cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if the furnishing Party fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such violation; or in the event the furnishing Party obtains actual knowledge that any such warranty, representation or statement has become false or misleading after the time that it was made, and the furnishing Party fails to provide written notice to the receiving Party of the false or

misleading nature of such warranty, representation or statement within ten (10) days after the furnishing Party learns of its false or misleading nature.

(3) Insolvency. Default shall occur in the event that the dissolution or termination of the Company's existence as a going business or concern, the Company's insolvency, appointment of receiver for any part of the Company's property, any assignment of all or substantially all of the assets of the Company for the benefit of creditors of the Company, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against the Company unless, in the case of involuntary proceedings, such proceedings are discharged within ninety (90) days after filing.

SECTION 8. EFFECT OF AN EVENT OF DEFAULT.

(1) Notice and Remedies. In the event of default under this Agreement, including without limitation, Section 7, the non-defaulting Party shall give written notice to the defaulting Party of any default, and the defaulting Party shall have the period provided in Section 7 to cure said default. Should said default remain uncured as of the last day of the applicable cure period and the non-defaulting Party is not otherwise in default, the non-defaulting Party shall have the right to immediately terminate this Agreement. In the event Potter County terminates this Agreement as a result of the foregoing, it will have no further obligation to make any remaining Program Grant Payment, including that of the current year, nor the immediately preceding year. Additionally, the Company will immediately owe Potter County repayment of the previous Program Grant Payments made to the Company, plus interest at the rate of the prime rate per annum. The Company shall pay such funds to Potter County within sixty (60) days of termination. In the event Potter County is the party in default, Potter County will cure the default as soon as possible and will pay the amounts under the Agreement, plus interest at the rate of the prime rate published in the *Wall Street Journal* plus two percent (2%) per annum. Repayment of previous Program Grant Payments will take into account exceptions for partial compliance adjustments found in Section 6 (3) under this Agreement.

(2) Damage Limitation. Under no circumstances shall the Company be liable to Potter County under this Agreement for damages in excess of the aggregate amount of funds paid by Potter County to the Company pursuant to this Agreement. Neither party shall be liable to the other for indirect, special or consequential damages except as provided for in Section 5.

SECTION 9. ADDITIONAL PROPERTY TAX PROVISIONS

The following additional Property Tax provisions are a part of this Agreement:

(1) Legislative or Judicial Changes. In the event of any legislative or judicial interpretation that limits or restricts Potter County's ability to pay the Property Tax rebates or other incentive herein provided or otherwise extracts or imposes any penalty or other restriction upon the calculation or payment of same, such rebate will be modified or cease as of the effective date of such limitation or restriction and be of no further force, effect or consequence, in which event Potter County shall be under no further obligation to the

Company as of the effective date of such limitation or restriction. However, Potter County and the Company agree to modify the rebate provided for herein to the extent permitted by such legislative or judicial action to the fullest extent then authorized without penalty or other restriction upon Potter County for the payment of same.

(2) Erroneously Paid Property Tax. In the event that the Potter County Commissioners Court, or another court of competent jurisdiction, determines that any property taxes were erroneously overpaid or underpaid by the Company to Potter County, an appropriate credit or offset shall be applied against the next Program Grant Payment provided for herein. If there is not another Program Grant Payment remaining under this Agreement, then Company and Potter County respectively agree to issue to the other any and all such payments or repayments as indicated in order to balance the books for the erroneously paid property tax. Notification of any such required adjustment will be provided to the Company at the earliest practical date.

SECTION 10. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

(1) Amendments. At any time, Potter County and the Company may amend this Agreement for the mutual benefit of the Parties, or for any other reason, including an amendment to induce the Company to continue development and commercial activities in Potter County when this Agreement could otherwise be terminated. Potter County and the Company agree to consider reasonable requests for amendments to this Agreement which may be made by either of the Parties hereto, lending institutions, bond counsel or financial consultants. Any amendments to this Agreement must be in writing and signed by the appropriate authorities of both Potter County and the Company.

(2) Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Potter County, Texas. Venue for any action arising under this Agreement shall lie in the state courts of appropriate jurisdiction in Potter County, Texas.

(3) Assignment. This Agreement may not be assigned without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

(4) Binding Obligation. This Agreement shall become a binding obligation on the Parties upon execution by all signatories hereto. Potter County warrants and represents that the individual executing this Agreement on behalf of Potter County has full authority to execute this Agreement and bind Potter County to the same. The Company warrants and represents that the individual executing this Agreement on the Company's behalf has full authority to execute this Agreement and bind it to the same.

(5) Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.

(6) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

(7) Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties as to the matters set forth in this Agreement. All prior written or oral offers, counteroffers, memoranda of understanding, proposals and the like are superseded by this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the Party or Parties sought to be charged or bound by the alteration or amendment. Neither Party is relying on any statement, representation, or warranty of the other Party not expressly set out in this Agreement. Each of the undersigned authorized representatives of the Parties, warrants and represents and does hereby state and represent that no promise or agreement which is not herein expressed has been made to him or her in executing this Agreement, and that neither of the signatories is relying upon any statement or representation of any agent of the Parties. Each Party is relying on his or her own judgment and each Party has been represented by independent counsel of its choosing. This Agreement shall not be construed against the drafter hereof, but shall be construed as if all Parties drafted the same.

(8) Force Majeure. It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of Force Majeure, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such Party was delayed. This section does not affect the Company's obligations or Potter County's discretion described in Section 5(1).

(9) Further Acts and Releases. Potter County and the Company each agrees to take such additional acts and execute such other documents as may be reasonable and necessary in the performance of their obligations hereunder.

(10) Governmental Powers; Waiver of Immunity. By execution of this Agreement, Potter County does not waive or surrender any of its governmental powers, immunities or rights.

(11) No Third Party Beneficiaries. The performance of the respective obligations of Potter County and the Company under this Agreement are not intended to benefit any Party other than Potter County or the Company, except as expressly provided otherwise herein. No person or entity not a signatory to this Agreement shall have any rights or causes of action against any Party to this Agreement as a result of that Party's performance or non-performance under this Agreement, except as expressly provided otherwise herein.

(12) Notices. Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally delivered either by hand, or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, or (iii) upon delivery via a delivery service, Federal Express or any other nationally recognized

overnight courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof, and addressed as follows:

If to Company:	BSA Hospital, LLC 1500 Wallace Blvd. Amarillo TX 79106 ATTN: Lorenzo Olivarez
If to Potter County:	Potter County Judge 500 S. Fillmore, Room 103 Amarillo, Texas 79101

(13) Right of Offset. Notwithstanding the provisions of Section 9(2), Potter County may, at its option, after prior written notice and a 30 day period to cure, offset any amounts due and payable under this Agreement against any debt lawfully due and owing to Potter County from the Company, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt has been reduced to judgment by a court.

(14) Relationship of Parties. The Parties shall not be deemed in a relationship of partners or joint ventures by virtue of this Agreement, nor shall either Party be an agent, representative, trustee or fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement.

(15) Severability. Potter County and the Company declare that the provisions of this Agreement are severable. If it is determined by a court of competent jurisdiction that any term, condition or provision hereof is void, voidable, or unenforceable for any reason whatsoever, then such term, condition or provision shall be severed from this Agreement and the remainder of the Agreement enforced in accordance with its terms.

(16) Time is of the Essence. Time is of the essence in the performance of this Agreement.

(17) Attorneys' Fees. In the event that either Party hereto brings an action or other proceeding to enforce or interpret the terms and provisions of this Agreement, the prevailing Party in that action or proceeding shall be entitled to have and recover from the non-prevailing Party all such fees, costs and expenses (including, without limitation, all court costs and reasonable attorneys' fees) as the prevailing Party may suffer or incur in the pursuit or defense of such action or proceeding.

POTTER COUNTY, TEXAS

By: _____
Nancy Tanner, Potter County Judge

Date: _____

ATTEST:

By: _____
Julie Smith, Potter County Clerk

BSA HOSPITAL, LLC, a Texas Limited Liability Company

By: _____

_____, Managing Member

Date: 4-22-19

EXHIBIT "A"

A 5.71 acre tract of land being a portion of Lot 1, Block 1, Amarillo Medical Center Unit No. 14, an addition to Potter County, Potter County, Texas, according to the recorded map or plat thereof, of record in Volume 2304, Page 716 of the Official Public Records of Potter County, Texas, situated in Section 26, Block 9, B.S.& F. Survey, Amarillo, Potter County, Texas, surveyed on the ground by Robert Keys and Associates on this 11th day of September, 2018, and said tract of land being further described by metes and bounds as follows:

BEGINNING at a 3/8 inch iron rebar with a cap stamped "KEYS R.P.L.S. 2507", found at northwesterly corner of Lot 4-B, Block 1, Amarillo Medical Center Unit No. 22, an addition to Potter County, Potter County, Texas, according to the recorded map or plat thereof, of record under Clerk's File No. 20180PR0009517 of the Official Public Records of Potter County, Texas;

Thence S. 22° 07' 48" E., (Directional Control GPS Observation WGS-84), at 310.78 feet pass a 3/8 inch iron rebar with a cap stamped "KEYS R.P.L.S. 2507", found at the southwesterly corner of said Lot 4B, a total distance of 453.50 feet to a 3/8 inch iron rebar with a cap stamped "KEYS R.P.L.S. 2507", set at the southeasterly corner of this tract of land, from whence a 1/2 inch iron rebar with a cap stamped "KELLEY-R.P.L.S.", found at the northeasterly corner of Lot 2, Block 1, Amarillo Medical Center Unit No. 9, an addition to Potter County, Potter County, Texas, according to the recorded map or plat thereof, of record in Volume 1579, Page 31 of the Official Public Records of Potter County, Texas bears N. 68□ 23' 16" E., 73.46 feet;

Thence S. 68° 23' 16" W., 467.99 feet along the north line of said Lot 2, Block 1 to a 1/2 inch iron rebar, found at the southwesterly corner of this tract of land and same being the northwesterly corner of said Lot 2;

Thence N. 25° 18' 46" W., 375.58 feet along the easterly right-of-way line of Coulter Street (dedication not found) and same being the most northerly west line of said Lot 1 to a 1/2-inch iron rebar, found at the beginning of a curve to the right having a radius of 1372.50 feet;

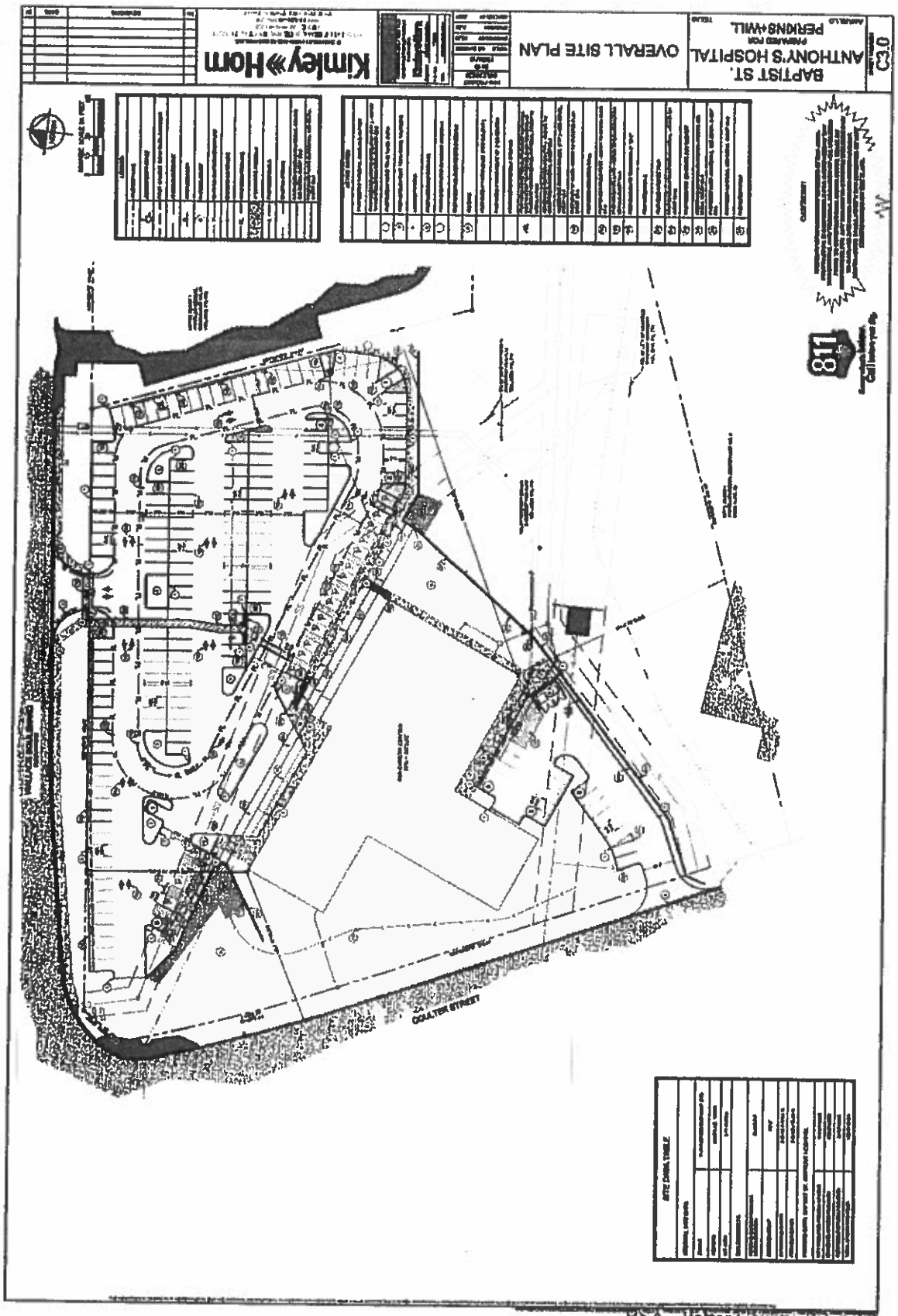
Thence Northwesterly, along said curve easterly right-of-way line of said Coulter Street, and same being the most northerly west line of said Lot 1, an arc distance of 175.94 feet, with a chord of N. 21□ 42' 58" W., 175.82 feet to a "X" cut in concrete, found at the most westerly northwest corner of this tract of land and the end of said curve;

Thence N. 32° 32' 57" E., 37.97 feet along a street right-of-way cut-off corner and same being the chamfer corner of the westerly and northerly lines of said Lot 1 to a 1/2-inch iron rebar, found at the most northerly northwest corner of this tract of land;

Thence N. 83° 00' 19" E., 472.98 feet along the southerly right-of-way line of Wallace Boulevard as dedicated in Volume 1030, Page 19 of the Deed Records of Potter County, Texas, and same being the northerly line of said Lot 1 to the **POINT OF BEGINNING**.

WALLACE BLVD.
COULTER STREET
Notes
Schedule B Item 10(j) Survey Notes – Chicago Title Insurance Company, G.F. No. GT-0072-2500100222
Notes and Remarks Description Attached to Exhibit "A"
Certificate
To:
Robert E. Keys
ALTA/ASCE 2011 Land Title Survey for
Amarillo Area Foundation
of 6.171 acres at the Corner of
Coulter St. & Wallace Blvd.,
Amarillo, Potter County, Texas
Legend
Boundary Line Conveyance

EXHIBIT "B"


Kimley»Horn
OVERALL SITE PLAN
BAPTIST ST.
ANTHONY'S HOSPITAL
PERRYNS 4 MILL
C3.0
811
COULTER STREET