

ORDINANCE NO. BL2014- 669

An ordinance authorizing the Industrial Development Board of The Metropolitan Government of Nashville and Davidson County to negotiate and accept payments in lieu of ad valorem taxes with respect to affiliates of HCA Holdings, Inc., including Parallon Business Solutions, LLC, HealthTrust Purchasing Group, LP, and Sarah Cannon Holdings, LLC.

WHEREAS, The Metropolitan Government of Nashville and Davidson County (hereafter referred to as "Metropolitan Government") is vitally interested in the economic welfare of its citizens and wishes to provide the necessary leadership to enhance this area's capabilities for growth and development; and

WHEREAS, the provision of jobs to area citizens by local business is both necessary and vital to the economic well-being of the Metropolitan Government; and

WHEREAS, pursuant to the Industrial Development Corporations Act, currently codified at Tenn. Code Ann. §§ 7-53-101 through 316 (such act, as heretofore or hereafter amended, the "Act"), the General Assembly of the State of Tennessee (the "General Assembly") has authorized the incorporation of public corporations known as "industrial development boards" in municipalities in the State of Tennessee (the "State"); and

WHEREAS, the Industrial Development Board of The Metropolitan Government of Nashville and Davidson County (the "Board") has been duly organized and incorporated in compliance with the Act; and

WHEREAS, the General Assembly has found and declared that the Board is performing a public function on behalf of the Metropolitan Government and that the Board is a public instrumentality of the Metropolitan Government; and

WHEREAS, the Supreme Court of Tennessee (the "Supreme Court") has found that the Board is an agency or instrumentality of the Metropolitan Government; and

WHEREAS, the Act expressly incorporates by reference the statement of public policy set forth in Section 3 of Chapter 209 of the Public Acts of 1955; and

WHEREAS, Chapter 209 of the Public Acts of 1955 states that the declared purpose of the Act is to do that which the State welfare demands and the State public policy requires to alleviate the problems of unemployment, to raise family income, to provide a means by which the citizens of the community may promote and develop industry in their area so as to obtain a balanced economic development highly essential to the welfare of the State, and to promote the development of commercial, industrial, agricultural and manufacturing enterprises by the several municipalities so as to be given local benefits peculiar to each and general benefits to the entire State; and

WHEREAS, the General Assembly also has declared that the purposes of the Act include maintaining and increasing employment opportunities by promoting industry, trade and commerce by inducing manufacturing, industrial, financial, service and commercial enterprises to locate or remain in the State; and

WHEREAS, the Supreme Court has held that the purposes of the Act include the promotion of industry and the development of trade to provide against low wages and unemployment and that such purposes are public in nature; and

WHEREAS, the Board is empowered pursuant to the Act to acquire, whether by purchase, exchange, gift, lease or otherwise, and to improve, maintain, equip and furnish, "projects" (as defined in the Act), and to lease such projects to others; and

WHEREAS, HCA Holdings, Inc. ("HCA") is the nation's leading provider of healthcare services and is headquartered in Nashville, Tennessee; and

WHEREAS, Parallon Business Solutions, LLC ("Parallon"), an indirect wholly-owned subsidiary of HCA, (a) is one of the nation's leading and most comprehensive providers of business solutions for health care systems, (b) provides revenue cycle and business process expertise; workforce management solutions; supply chain services; information technology services; and the purchasing power of HealthTrust Purchasing Group, L.P. ("HPG") to hundreds of hospitals nationwide, and (c) currently maintains its corporate headquarters in Williamson County, Tennessee; and

WHEREAS, HPG, an indirect partially-owned subsidiary of HCA, (a) owns and operates HealthTrust Purchasing Group, a group purchasing organization utilized by hospitals, ambulatory surgery centers, physician practices and other healthcare providers, (b) now conducts its operations in connection with Parallon, and (c) currently maintains its corporate headquarters in Williamson County, Tennessee; and

WHEREAS, Sarah Cannon Holdings, LLC ("Sarah Cannon"), an indirect partially-owned subsidiary of HCA, (a) is a leading provider of oncology research and develops clinical pathways in oncology, (b) serves over 75,000 new oncology patients every year, participates in drug trials, and administers the first private drug development program in the United Kingdom, and (c) currently maintains its corporate headquarters in Nashville, Tennessee; and

WHEREAS, Parallon, HPG and Sarah Cannon (each, a "Company" and collectively, the "Companies") each has announced its decision to relocate its headquarters and certain of its respective central business operations to a facility (as further defined below, the "Project") that will be located within the boundaries of the Metropolitan Government (the area within such boundaries being referred to as the "County"); and

WHEREAS, in its initial scope and configuration, the Project will consist of (a) an approximately 10.55 acre parcel of land located at the intersection of Charlotte Avenue and Eleventh Avenue, as shown on Exhibit A hereto (the "Land"), (b) office buildings and related common areas to be constructed on the Land (collectively, the "Office Building"), (c) multi-deck

parking facilities to be constructed on the Land (collectively, the "Parking Garage"), and (d) certain other improvements to be constructed on the Land; and

WHEREAS, HCA currently anticipates that the Office Building will contain between 700,000 and 850,000 rentable square feet of space (excluding common areas for shared use for by all occupants of the Project), and also anticipates that approximately 45,000 rentable square feet of space will be used for retail, restaurant or other uses that are typical for an office facility of the size, nature and quality of the Project; and

WHEREAS, in addition to the Office building and the Parking Garage, a hotel may be constructed on a portion of the Land (the "Hotel"); and

WHEREAS, if and when the Hotel is constructed, the Hotel will not be included in the "Project" subject to the PILOT Agreement (as defined below), title to the Hotel will not be conveyed to the Board, the Hotel will not be subject to the PILOT Lease (as defined below), and proceeds from the Board's sale of the Bonds (as defined below) will not be used to finance costs of the acquisition, construction and equipping of the Hotel; and

WHEREAS, HCA has advised the Metropolitan Government that WCP Properties, LLC, a subsidiary of HCA ("WCP"), intends to enter into a lease agreement with the Board (the "PILOT Lease") pursuant to which (a) the Board will issue one or more series of its industrial development revenue bonds (the "Bonds") in order to finance the cost of the acquisition, construction and equipping of the Project, (b) the Board will appoint WCP as the Board's agent to acquire, construct and equip the Project, (c) title to the Project will be conveyed to the Board, (d) the Board will lease the Project to WCP, and (e) the Board will grant WCP the right to purchase the Project; and

WHEREAS, HCA also has advised the Metropolitan Government that pursuant to one or more sublease agreements between WCP and the Companies or one or more other subsidiaries of HCA, WCP will sublease approximately 475,000 - 500,000 rentable square feet of office space within the Office Building to the Companies or one or more other subsidiaries of HCA and provide the Companies (or such other HCA subsidiaries) with access to and use of parking spaces at the Parking Garage; and

WHEREAS, HCA anticipates that the acquisition, construction and development of the Land, the Office Building and the Parking Garage, in their initial scope and configuration, will cost approximately \$200,000,000 and is expected to be completed in 2016; and

WHEREAS, HCA expects that the development and location of the Project within the County will result in significant employment and other commercial opportunities for area citizens, develop trade and commerce in and adjacent to the County, contribute to the general welfare, and alleviate conditions of unemployment; and

WHEREAS, pursuant to Tenn. Code Ann. § 7-53-305, all properties owned by the Board are exempt from ad valorem taxation in the State of Tennessee; and

WHEREAS, pursuant to Tenn. Code Ann. § 7-53-305(b), the Metropolitan County Council (the "Council") has the power to delegate to the Board the authority to negotiate and accept from its lessees payments in lieu of ad valorem taxes, provided that such payments are in furtherance of the Board's public purposes; and

WHEREAS, the benefits to the Metropolitan Government of the development and location of the Project within the boundaries of the Metropolitan Government will provide an opportunity for the Board to exercise its powers, as enumerated above, to (a) acquire, by purchase, exchange, gift or lease, property that will be used with respect to the Project, (b) lease the Project to WCP pursuant to the PILOT Lease (conditioned upon the execution and delivery of the HCA Sublease), and (c) enter into one or more agreements with WCP and one or more other HCA subsidiaries to accept payments in lieu of ad valorem taxes with respect to the Project; and

WHEREAS, the Board may only negotiate and accept payments in lieu of ad valorem taxes with authorization from the Council; and

WHEREAS, it is in the interest and welfare of the Metropolitan Government to delegate authority to the Board to negotiate and execute a payment in lieu of tax agreement with WCP (and, if applicable, one or more HCA subsidiaries) pursuant to which the Board will accept payments in lieu of tax with respect to the Project from WCP.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1: The Council of the Metropolitan Government finds that (a) the Board's acceptance of payments in lieu of ad valorem taxes with respect to the Project is in furtherance of the Board's public purpose of maintaining and increasing employment opportunities, as set forth in Tenn. Code Ann. § 7-53-102, and the other public purposes described above; and (b) the Board's acquisition, construction and development of the Project and its leasing of the Project under the PILOT Lease as contemplated by this Ordinance will develop trade and commerce in and adjacent to the County, will contribute to the general welfare and will alleviate conditions of unemployment. The Metropolitan Government acknowledges that in connection with the financing of the Project, the Board may, at the request of WCP, grant a mortgage on the Project, subordinate its interest in the Project to any mortgage granted by WCP, and create or approve a condominium regime for the Project.

Section 2: The Metropolitan Government hereby delegates to the Board the authority to enter into a Payment in Lieu of Tax Agreement ("PILOT Agreement") with respect to the Project (which shall be in substantially the form as attached in Exhibit B) and to negotiate and accept payments in lieu of all ad valorem real property taxes with respect to the Project for the period during the Term of such PILOT Agreement. The Term of the PILOT Agreement will begin as of the effective date of the PILOT Lease, which shall be the same day as the Board first issues Bonds under the PILOT Lease and will end on the fifteenth (15th) anniversary of such date; provided, however, that if a Company Entity (as defined below) continues to lease, sublease or otherwise have the right to occupy a portion of the Project at the end of such 15-year period, the Term of the PILOT Agreement shall be extended until the earlier of (a) the date on which no

Company Entity leases, subleases or otherwise has the right to occupy a portion of the Project, or (b) the day immediately preceding the twentieth (20th) anniversary of the effective date of the PILOT Agreement.

Section 3: (a) Subject to the adjustments described in Sections 3(c) and (d), below, the amount of the payments in lieu of tax with respect to the Project (the "PILOT Payments") that shall be required for each calendar year during the Term of the PILOT Agreement shall be the amount equal to (i) one hundred percent (100%) of the Standard Tax (as defined below) for such calendar year, *minus* (ii) the PILOT Deduction (as defined below) that accrues for such calendar year.

(i) The term "Standard Tax" shall mean, with respect to any period, the amount equal to the amount of ad valorem real property tax that WCP would be required to pay with respect to such period with respect to the property that is then subject to the PILOT Lease if WCP owned such property; provided, however, that for purposes of calculating the Standard Tax, the aggregate assessed value of the Land and the Office Building for the period beginning on the effective date of the PILOT Agreement and the PILOT Lease and ending on the subsequent date as of which the Project is re-appraised in connection with a general County-wide re-appraisal of real property will be (A) an amount per square foot of rentable square foot of space in the Office Building that is not greater than \$200.00 per rentable square foot, *multiplied by* (B) the number of rentable square feet of space in the Office Building.

(ii) The "PILOT Deduction" that will accrue each calendar year during the Term of the PILOT Agreement will be \$3,000,000; provided, however, that beginning with the PILOT Payment and the PILOT Deduction with respect to 2018, if the number of Incremental Positions created as of December 31 of the preceding year is less than the projected number of Incremental Positions for such date, the amount of the PILOT Deduction that accrues for such calendar year will be reduced by \$300,000 for every shortfall of 100 Incremental Positions as of such date.

(iii) The number of Incremental Positions as of any given date will be (A) the number of full-time Project-based employee positions and independent contract personnel positions of Company Entities and Company Suppliers (as defined below) as of such date, plus (B) an additional number of Incremental Positions determined on a "full-time equivalent" basis as of such date for part-time Project-based employees and independent contractor personnel of Company Entities and Company Suppliers. With respect to employees and independent contractor personnel of Company Supplier, such positions will not be included in the determination of Incremental Positions unless (1) the applicable employee or independent contractor individual's exclusive Project-based responsibility is to work with and support the activities and functions of Company Entities, and (2) the applicable employee or independent contractor individual's position is based within a portion of the Project that a Company Entity leases, sub-leases or otherwise has the right to occupy. Additionally, no full-time or part-time employee or independent contractor personnel of Company Entities or Company Suppliers will be included in the determination of the number of Incremental Positions if such employee's

or independent contractor personnel's position (1) existed, (2) was filled, and (3) was based in the County as of August 31, 2012. Notwithstanding the foregoing, the Metropolitan Government acknowledges that due to lack of space at Parallon's headquarters facility in Williamson County, certain Parallon employees who otherwise would be based in such headquarters are (and as of August 31, 2012, were) temporarily based in office space in Metro Center in the County. To the extent that any such positions are relocated to the Project, those positions will be included in the calculation of the number of Incremental Positions. The projected number of Incremental Positions for December 31 of each year is as follows:

<u>Incremental Positions Measurement Date: December 31 of the Year Listed Below</u>	<u>Projected Number of Incremental Positions on Measurement Date</u>	<u>Measurement Date Relates to PILOT Deduction for the Year Listed Below</u>
2017	1,000	2018
2018	1,300	2019
2019 and thereafter	1,500	2020 and thereafter

(iv) The term "Company Entity" means (A) Parallon, HPG and Sarah Cannon, (B) any successor to Parallon, HPG or Sarah Cannon, including, without limitation, any corporation, partnership, limited liability company or other entity that (1) acquires, directly or indirectly, a controlling interest in Parallon, HPG or Sarah Cannon (whether through merger, purchase of partnership interests or other ownership interests, swap of partnership interests or other ownership interests, or otherwise), (2) merges or consolidates with Parallon, HPG or Sarah Cannon, or (3) acquires substantially all of the assets of Parallon, HPG or Sarah Cannon, and/or (C) any corporation, partnership, limited liability company or other entity that directly or indirectly controls, is controlled by, or is under common control with, any of the foregoing.

(v) The term "Company Supplier" means any corporation, partnership, limited liability company or other entity that (A) is not a Company Entity; and (B) produces, assembles, stores or manages goods that are utilized, sold, leased or distributed by a Company Entity or provides or manages services in connection with the operations of a Company Entity.

(b) To the extent the leasehold, sub-leasehold or similar interest of WCP in the Project (or of any Company Entity or other entity that holds a leasehold, sub-leasehold or similar interest in the Project) is assessed and taxed by the Metropolitan Government (collectively, "Leasehold Taxes"), the amount of the required PILOT Payment may be reduced by the amount of Leasehold Taxes actually paid to the Metropolitan Government by WCP, such Company Entity or such other entity. If the amount of Leasehold Tax payments actually made by WCP, such Company Entities or such other entities to the Metropolitan Government exceed the annual required PILOT Payment, such excess Leasehold Taxes may be carried forward and applied against PILOT Payments with respect to any future year ("Leasehold Tax Credit").

(c) In any given year, if the amount of the PILOT Deduction that accrues for such year exceeds the amount of the Standard Tax for such year, such excess PILOT Deduction may

be carried forward and applied against PILOT Payments with respect to any future year ("PILOT Deduction Credit"). All unapplied PILOT Deduction Credits and Leasehold Tax Credits may be carried forward and applied against PILOT Payments with respect to any future years. Additionally, WCP, the HCA subsidiaries that are party to the HCA Sublease and the Companies shall have the right to determine the order in which they apply Leasehold Taxes, carried forward Leasehold Tax Credits and carried forward PILOT Deduction Credits against PILOT Payments pursuant to Section 3(b) and this Section 3(c).

(d) WCP, the HCA subsidiaries that are party to the HCA Sublease and/or the Companies shall be permitted to challenge the assessment of any property that is then subject to the PILOT Lease in the same manner as if such entity owned such property.

(e) WCP will make PILOT Payments on an annual basis, with each annual PILOT Payment being based on the applicable calendar year during the Term of the PILOT Agreement authorized hereby. PILOT Payments will be due on or before the last day of February following the calendar year to which a PILOT Payment applies. The final version of the PILOT Agreement authorized by this Ordinance will include appropriate provisions for the proration of the Standard Tax, the PILOT Deduction and the PILOT Payment applicable to a given year under appropriate circumstances, including, without limitation, for periods of less than a full calendar year for which a PILOT Payment is payable with respect to the Project (or any portion of the Project).

Section 4: The PILOT Agreement authorized by this Ordinance shall apply to the Land, all real property comprising a portion of, or used at or in connection with facilities located on the Land, including all easements or other property rights, buildings, improvements, fixtures, trade fixtures, construction in progress, and other properties of any nature comprising a portion of, or used in connection with, facilities located on the Land that are treated as real property for ad valorem tax purposes. The PILOT Agreement shall apply to such facilities and properties in their current scope and configuration and to all replacements, enhancements, additions, expansions and improvements to such properties and facilities.

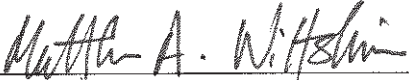
Section 5: WCP will produce and manage a diversified business enterprise program to assist small, minority owned, and women owned business enterprises ("DBEs") with respect to their participation in the construction of the Project. Such program will be designed with a DBE participation target of not less than 20% of the Project's hard construction costs and shall be subject to the reasonable approval of, the Metropolitan Government, and will provide for quarterly reporting to the Metropolitan Council and the Minority Caucus of the status of DBE participation in the construction of the Project. The program will include a process to document all (i) good faith efforts with prospective bidders to reach out to DBE companies, (ii) joint venture or partnership participation by DBE companies, (iii) DBE participation by subcontractors, suppliers or joint ventures proposed by each bidder, (iv) any increases or decreases from an anticipated DBE participation by successful bidders, and (v) the level of payments to DBE's of the Project's hard construction costs. Additionally, WCP will utilize the Metropolitan Government's workforce development program with the goal of ensuring that reasonable efforts are made to hire or utilize residents of Davidson County for the construction of the Project.

Section 6: The Metropolitan Government acknowledges that one or more HCA subsidiaries other than WCP may be party to the PILOT Agreement and/or the PILOT Lease. The Metropolitan Government also acknowledges that such HCA subsidiaries may choose to have a developer, financial institution or similar entity lease the Project from the Board and sublease all or a portion of the Project to HCA subsidiaries rather than having one or more HCA subsidiaries lease the Project directly from the Board. The final version of the PILOT Agreement authorized by this Ordinance (a) will be modified, as necessary, to reflect the identity of the HCA subsidiaries which will be parties to the PILOT Agreement and the PILOT Lease (and, if applicable, to reflect whether a developer, financial institution or similar entity will participate in the development or leasing of the Project) and other similar changes, and (b) must be approved as to legality by the Metropolitan Government Department of Law prior to being executed by the Board. If a developer, financial institution or similar entity is utilized to develop the Project or lease the Project from the Board, WCP must structure the development arrangement so that all of the benefits of the PILOT Agreement inure solely to the benefit of the Companies and their affiliates and not the developer, financial institution or other entity.

Section 7: All ordinances or resolutions, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

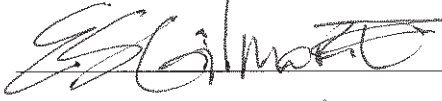
Section 8: This Ordinance shall take effect from and after its passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

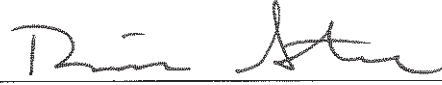
RECOMMENDED:



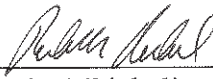
Matthew A. Wiltshire
Director of the Mayor's Office
Economic and Community Development

INTRODUCED BY:





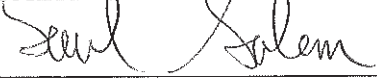
APPROVED AS TO AVAILABILITY
OF FUNDS:



Richard M. Riebeling
Director of Finance

Member(s) of Council

APPROVED AS TO FORM AND
LEGALITY:



Saul Solomon
Director of Law