ORDINANCE NO. BL2011-58

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 LifePoint Corporate Services General Partnership (a subsidiary of LifePoint Hospitals, Inc.) and its Project Developer.

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, LifePoint Hospitals, Inc., a Delaware corporation ("LifePoint"), is a publicly traded company that, acting through its subsidiaries (LifePoint and its subsidiaries are referred to collectively as the "Company"), operates general acute care hospitals in non-urban markets in the United States, including hospitals located in the State; and

WHEREAS, LifePoint Corporate Services, General Partnership, a Delaware general partnership, is an indirect, wholly-owned subsidiary of LifePoint ("LCS"); and

WHEREAS, the headquarters and certain other central corporate operations of the Company are located at multiple facilities in Williamson County, Tennessee; and

WHEREAS, LifePoint has announced its decision to relocate and consolidate the Company's headquarters and certain central corporate operations to a facility to be (a) developed by Highwoods Realty Limited Partnership, a North Carolina limited partnership that is not an affiliate of LifePoint (the "Project Developer") and (b) located in the Seven Springs Office Park, which is on Old Hickory Boulevard and within the boundaries of the Metropolitan Government (as further defined below, the "Project"); and

WHEREAS, in its initial scope and configuration, the real property and improvements of the Project will consist of a parcel of land located in the Seven Springs Office Park, as shown on Exhibit A hereto (the "Project Site"), an approximately 203,000 square foot office building to be constructed on the Project Site (the "Office Building"), a multi-deck parking garage with approximately 881 parking spaces to be constructed on the Project Site (the "Parking Garage"), certain shared common areas, and certain other improvements to be constructed on the Project Site (the Project Site, the Office Building, the Parking Garage and such common areas and other improvements are referred to collectively as the "Real Property Project"); and

WHEREAS, LifePoint currently estimates that the Project Site will be between 3.5 and 4.0 acres and will be configured substantially as shown in Exhibit A hereto, but both the precise size and the precise location/configuration of the Project Site are subject to final determination; and

WHEREAS, LifePoint also has announced its decision to locate an information technology systems center within the Office Building (the "IT Center"); and

WHEREAS, the personal property to be located at the IT Center or otherwise required at the Office Building as a result of locating the IT Center at the Office Building will include (a) servers, data storage systems, networking equipment, and other hardware or other property necessary or appropriate for use as part of the IT Center, (b) equipment and other property located at the Office Building (or elsewhere at the Real Property Project) necessary or appropriate to support the IT Center (including a back-up generator system, a supplemental fire suppression system, a supplemental HVAC system and supplemental cabling or other data transmission lines), and (c) software located at the IT Center (such property and improvements that are not treated as a portion of the Real Property Project are referred to collectively as the "IT Project") (the Real Property Project and the IT Project are referred to collectively as the "Project"); and

WHEREAS, LifePoint has advised the Metropolitan Government that the Project Developer will enter into a lease agreement with the Board (the "Real Property PILOT Lease") pursuant to which (a) the Board will issue its industrial development revenue bonds in order to finance the cost of the acquisition, construction and equipping of the Real Property Project, (b) the Board will appoint the Project Developer as the Board's agent to acquire, construct and equip the Real Property Project, (c) title to the Real Property Project will be conveyed to the Board, (d) the Board will lease the Real Property Project to the Project Developer, and (e) the Board will grant the Project Developer the right to purchase the Real Property Project; and

WHEREAS, LifePoint also has advised the Metropolitan Government that pursuant to a sublease agreement between the Project Developer and LCS (the "LifePoint Lease") the Project Developer will sublease the entire rentable square footage of the Office Building to the Company, provide the Company with access to and use of approximately 761 of the parking spaces at the Parking Garage on a reserved and exclusive basis, and provide the Company with access to and use of the common areas of the Real Property Project; and

WHEREAS, with respect to the IT Project, LifePoint has advised the Metropolitan Government that LifePoint intends that either LifePoint or a subsidiary of LifePoint will enter into a lease agreement with the Board (the "IT PILOT Lease") pursuant to which (a) the Board will issue its industrial development revenue bonds in order to finance the cost of the acquisition and installation of the IT Project, (b) the Board will appoint the Company as the Board's agent to acquire and install the IT Project, (c) title to the IT Project will be conveyed to the Board, (d) the Board will lease the IT Project to the Company, and (e) the Board will grant the Company the right to purchase the IT Project; and

WHEREAS, LifePoint and the Project Developer anticipate that the acquisition, construction and development of the Office Building and the Garage, in their initial scope and configuration, will cost approximately $37,000,000 and will be completed in 2013; and

WHEREAS, LifePoint anticipates that the acquisition and installation of the IT Project, in its initial scope and configuration, will be completed within a reasonable period after the completion of construction of the Real Property Project; and

WHEREAS, LifePoint expects that the development and location of the Project within the boundaries of the Metropolitan Government will result in significant employment and other commercial opportunities for area citizens; 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 Real Property Project to the Project Developer pursuant to the Real Property PILOT Lease (which, in turn, will sublease all of the rentable square footage of the Office Building to the Company and provide use of approximately 761 of the parking spaces at the Parking Garage to the Company on a reserved and exclusive basis pursuant to the LifePoint Lease), (c) lease the IT Project to the Company, and (d) enter into one or more agreements with the Company and/or the Project Developer 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 the Company and to negotiate and accept payments in lieu of tax with respect to the Project from the Company (and/or from the Project Developer with respect to the Real Property Project payments in lieu of tax).

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 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.

Section 2: The Metropolitan Government hereby delegates to the Board the authority to negotiate and accept (a) payments in lieu of all ad valorem real property taxes with respect to the Real Property Project for a period beginning on the date that the Board and the Project Developer enter into the Real Property PILOT Lease and ending fifteen years after the LifePoint Occupancy Date (as defined below), and (b) payments in lieu of all ad valorem personal property taxes with respect to the IT Project for a period beginning on the date that the Board and the Company enter into the IT PILOT Lease and ending fifteen years after the LifePoint Occupancy Date. The term "LifePoint Occupancy Date" shall mean the date on which the Company's exclusive right to occupy the Office Building pursuant to the LifePoint Lease commences.

Section 3: (a) The amount of the payments in lieu of tax with respect to the Real Property Project (the "Real Property PILOT Payments") that shall be required during the term of the payment in lieu of tax agreement authorized hereby substantially in the form as attached in Exhibit B (the "PILOT Agreement") shall be the amounts set forth in clauses (i) through (v), below, as adjusted as provided in Sections 3(c) and (d), below:

(i) With respect to the period beginning on the date of the Real Property PILOT Lease and ending on (but excluding) the LifePoint Occupancy Date, the amount of the Real Property PILOT Payment shall be one hundred percent (100%) of the Real Property Standard Tax (as defined below) for such period;

(ii) With respect to the period beginning on the LifePoint Occupancy Date and ending on (but excluding) the fourth (4^{th}) anniversary of the LifePoint Occupancy Date, the amount of the Real Property PILOT Payment shall be zero percent (0%) of the Real Property Standard Tax for such period;

(iii) With respect to the period beginning on the fourth (4^{th}) anniversary of the LifePoint Occupancy Date and ending on (but excluding) the eleventh (11^{th}) anniversary of the LifePoint Occupancy Date, the amount of the Real Property PILOT Payment shall be forty percent (40%) of the Real Property Standard Tax for such period;

(iv) With respect to the period beginning on the eleventh (11^{th}) anniversary of the LifePoint Occupancy Date and ending on (but excluding) the fifteenth (15^{th}) anniversary of the LifePoint Occupancy Date, the amount of the Real Property PILOT Payment shall be seventy-five percent (75%) of the Real Property Standard Tax for such period; and

(v) With respect to any period on or after the fifteenth (15^{th}) anniversary of the LifePoint Occupancy Date, the amount of the Real Property PILOT Payment shall be 100% of the Real Property Standard Tax for such period.

(b) The term "Real Property Standard Tax" shall mean, with respect to any period, the amount equal to the amount of ad valorem real property tax that the Company would be required to pay with respect to such period with respect to the property that is then subject to the Real Property PILOT Lease if the Company owned such property.

(c) The entire Parking Garage will be conveyed to the Board and be subject to the Real Property PILOT Lease. Approximately 120 of the approximately 881 parking spaces to be located in the Parking Garage will not be made available to the Company on a reserved and exclusive basis (the "Excess Parking Spaces"). The final version of the PILOT Agreement authorized by this Ordinance will include a provision requiring an equitable adjustment to the Real Property PILOT Payments so that (i) with respect to the Excess Parking Spaces, the Real Property PILOT Payments will be 100% of the Real Property Standard Tax (the "Excess Parking Standard Tax"), and (b) the Real Property PILOT Payments for the remaining portion of the Real Property Project will be the percentage of the Real Property Standard Tax described in Sections 3(a)(i) – (v), above.

(d) With respect to any period during the term of the PILOT Agreement authorized by this Ordinance, the calculation of the Real Property PILOT Payment in accordance with Section 3(a), above, shall apply only to that portion of the Real Property Project that is either (i) leased by the Board to a LifePoint Lessee, or (ii) leased or subleased by the Board to a third party and subleased or otherwise made available to a LifePoint Lessee. Subject to the provisions of Sections 3(e) through (g) hereof, during any period during the term of such PILOT Agreement that a portion of the Real Property Project is not leased, subleased or otherwise made available to a LifePoint Lessee, the amount of the Real Property PILOT Payments with respect to such portion of the Project not leased, subleased or otherwise made available to a LifePoint Lessee shall be 100% of the Real Property Standard Tax for such portion of the Real Property Project.

(i) The term "LifePoint Lessee" shall mean either a LifePoint Entity or a LifePoint Supplier.

(ii) The term "LifePoint Entity shall mean (A) LifePoint, (B) any successor to LifePoint, including, without limitation, any corporation, partnership, limited liability company or other entity that (1) acquires, directly or indirectly, a controlling interest in LifePoint (whether through merger, stock purchase, stock swap or otherwise), (2) merges or consolidates with LifePoint, or (3) acquires substantially all of the assets of LifePoint, 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 (including LCS).

(iii) The term "LifePoint Supplier" means any corporation, partnership, limited liability company or other entity that (A) is not a LifePoint Entity; (B) provides or manages services in connection with the operations of the Company; and (C) occupies a portion of the Real Property Project, whether pursuant to a lease, a sublease or otherwise; provided, however, that such entities will be deemed "LifePoint Suppliers" only if substantially all of such entity's use of the portions of the Real Property Project leased, subleased or otherwise made available to it are in connection with the operations of the Company.

(e) The Company and/or the Project Developer shall be permitted to challenge the assessment of any property that is then subject to the Real Property PILOT Lease in the same manner as if the Company and/or the Project Developer owned such property.

(f) The Real Property PILOT Payments to be paid by the Company and/or the Project Developer shall be reduced by the amount of any ad valorem real property taxes actually paid by the Company or the Project Developer (or any entity that holds an interest in the Real Property Project by, through or under the Company or the Project Developer) by reason of their respective leasehold interests in the Real Property Project.

(g) The Company and/or the Project Developer will make Real Property PILOT Payments on an annual basis, with each annual Real Property PILOT Payment being based on the applicable calendar year during the term of the PILOT Agreement authorized hereby. Real Property PILOT Payments will be due on or before the last day of February following the calendar year to which a Real Property PILOT Payment applies. The final version of the PILOT Agreement authorized by this Ordinance will include appropriate provisions for the proration of the Real Property Standard Tax, the Excess Parking Standard Tax and the Real Property 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 Real Property PILOT Payment is payable with respect to the Real Property Project (or any portion of the Real Property Project).

Section 4. (a) The amount of the payments in lieu of tax with respect to the IT Project (the "IT PILOT Payments") that shall be required during the term of the PILOT Agreement authorized hereby shall be as follows:

(i) With respect to the period beginning on the date of the IT PILOT Lease and ending on (but excluding) the fourth (4^{th}) anniversary of the LifePoint Occupancy Date, the amount of the IT PILOT Payment shall be zero percent (0%) of the IT Standard Tax for such period;

(ii) With respect to the period beginning on the fourth (4^{th}) anniversary of the LifePoint Occupancy Date and ending on (but excluding) the eleventh (11^{th}) anniversary of the LifePoint Occupancy Date, the amount of the IT PILOT Payment shall be forty percent (40%) of the IT Standard Tax for such period;

(iii) With respect to the period beginning on the eleventh (11^{th}) anniversary of the LifePoint Occupancy Date and ending on (but excluding) the fifteenth (15^{th}) anniversary of the LifePoint Occupancy Date, the amount of the IT PILOT Payment shall be seventy-five percent (75%) of the IT Standard Tax for such period; and

(iv) With respect to any period on or after the fifteenth (15^{th}) anniversary of the LifePoint Occupancy Date, the amount of the IT PILOT Payment shall be 100% of the IT Standard Tax for such period.

(b) The term "IT Standard Tax" shall mean, with respect to any period, the amount equal to the amount of ad valorem personal property tax that the Company would be required to pay with respect to such period with respect to the personal property that is then subject to the IT PILOT Lease if the Company owned such property.

(c) The Company shall be permitted to challenge the assessment of any personal property that is then subject to the IT PILOT Lease in the same manner as if the Company owned such personal property.

(d) The IT PILOT Payments to be paid by the Company shall be reduced by the amount of any ad valorem personal property taxes actually paid by the Company (or any entity that holds an interest in the IT Project by, through or under the Company) by reason of their respective leasehold interests in the IT Project.

(e) The Company will make IT PILOT Payments on an annual basis, with each annual IT PILOT Payment being based on the applicable calendar year during the term of the PILOT Agreement authorized hereby. IT PILOT Payments will be due on or before the last day of February following the calendar year to which an IT PILOT Payment applies. The final version of the PILOT Agreement authorized by this Ordinance will include appropriate provisions for the proration of the IT Standard Tax and the IT 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 IT PILOT Payment is payable with respect to the IT Project (or any portion of the IT Project).

Section 5: The PILOT Agreement authorized by this Ordinance shall apply to (a) all real property comprising a portion of, or used at or in connection with facilities located on, the Project Site, 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 Project Site that are treated as real property for ad valorem tax purposes, and (b) all property subject to the IT PILOT Lease. 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 6: The final version of the PILOT Agreement authorized by this Ordinance must be approved as to legality by the Director of Law of the Metropolitan Government or his/her designee prior to being executed by the Board.

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

APPROVED AS TO AVAILABILITY
OF FUNDS:

Richard M. Riebeling
Finance Director

APPROVED AS TO FORM AND
LEGALITY:

Assistant Metropolitan Attorney

INTRODUCED BY:

Karen Y. Johnson

Members of Council