

EXHIBIT

"A"

CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This Chapter 380 Economic Development Program Agreement ("Agreement") is entered into this ____ day of _____, 2017, by and between the **City of Round Rock, Texas**, a Texas home rule municipal corporation ("**City**"), and **Medistar Round Rock Rehab, LLC**, a Texas limited liability company ("**Medistar**").

WHEREAS, the City has adopted Resolution No. _____, attached as Exhibit A ("City Resolution"), establishing an economic development program and authorizing the Mayor to enter into this Agreement with Medistar in recognition of the positive economic benefits to the City through Medistar's constructing a new building containing approximately 48,000 square feet (the "Facility") located on the Property, as defined below; and

WHEREAS, Medistar will spend at least \$17,000,000.00 on the construction of the Facility; and

WHEREAS, the purpose of this Agreement is to promote economic development as contemplated by Chapter 380 of the Texas Local Government Code whereby Medistar will expend significant sums to construct the Facility in conformance with the City's development approvals for the Facility; and

WHEREAS, the City agrees to provide performance based economic development grants to Medistar to defray a portion of Medistar's expenses;

NOW, THEREFORE, in consideration of the mutual benefits and promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Medistar agree as follows:

1. **Authority.** The City's execution of this Agreement is authorized by Chapter 380 of the Texas Local Government Code, and the City Resolution, and constitutes a valid and binding obligation of the City in the event Medistar proceeds with the construction of the Facility. The City acknowledges that Medistar is acting in reliance upon the City's performance of its obligations under this Agreement in making its decision to commit substantial resources and money to construct the Facility.
2. **Definitions.**
 - 2.1 **"Economic Incentive Payment(s)" ("EIPs")** means the amount paid by the City to Medistar under the Program.
 - 2.2 **"Effective Date"** is the date this Agreement is executed to be effective by the City and Medistar.
 - 2.3 **"Facility"** means the building to be constructed by Medistar containing approximately 48,000 square feet and located on the Property in Round Rock, Texas.

- 2.4 **“Opening Date”** means the date following 30 days after the City issues a Certificate of Occupancy for the Facility.
- 2.5 **“Program”** means the economic development program established by the City pursuant to Chapter 380 of the Texas Local Government Code and under the City Resolution to promote local economic development and stimulate business and commercial activity within the City.
- 2.6 **“Property”** means the tract of real property owned by Medistar described as Lot 1, Block A, Phase 2 of the Avery Centre Town Centre 1, a subdivision in Williamson County, Texas recorded as Document No. 2017075654 in the Plat Records of Williamson County as shown in **Exhibit B**.
- 2.7 **“Recapture Liability”** means the total amount of all EIP’s that are paid as result of this Agreement that are subject to recapture by the City from Medistar in the event of a Medistar default.
3. **Term.** This Agreement shall become enforceable upon its Effective Date and shall terminate on December 31, 2019.
4. **Rights and Obligations of Medistar.**
- 4.1 Completion of the Facility. Medistar agrees to complete construction of the Facility on or before the 31st day of July, 2019.
- 4.2 Amount of Investment. Medistar agrees to invest at least \$17,000,000 to construct the Facility. Medistar agrees to provide City with documentation showing that this obligation has been satisfied. City shall have the right, following reasonable advance notice to Medistar, to audit Medistar’s records to verify that this obligation has been satisfied.
- 4.4 Compliance with regulations. Medistar agrees that it will comply with the City’s development approval processes and shall construct the Facility consistent with City ordinances, development regulations and requirements.

5. **Rights and Obligations of the City.**

In consideration of Medistar’s compliance with this Agreement, the City agrees as follows:

- 5.1 Economic Incentive Payments (“EIPs”). City shall, subject to Medistar’s satisfaction of its obligation to construct the Facility as set forth in Section 4 above, make EIPs to Medistar as follows:

5.1.1 EIP For Economic Development Grant: City shall make an EIP to Medistar as follows:

<u>Date</u>	<u>Amount</u>
30 days after Opening Date	\$30,000.00

5.1.2 EIP For Roll Back Taxes. City shall make an EIP reimbursement to Medistar equal to the amount paid, if any, for roll back taxes on the Property paid by Medistar to the City. Such EIP shall be made within 30 days following Medistar providing documentation of the payment of such roll back taxes.

5.1.3 EIP for Development Fee. The City shall waive all site preparation, construction permit, and inspection fees related to the Facility, up to a maximum amount of \$100,000.

5.1.4 EIP for Fast Track Permitting. The City agrees to fast track all permit and/or City certificate requests related to the Facility, at no additional cost to Medistar.

6. EIP Recapture. In the event the City terminates this Agreement as a result of Medistar's default, the City may recapture and collect from Medistar the Recapture Liability. Medistar shall pay to the City the Recapture Liability within thirty (30) days after the City makes demand for same, subject to any and all lawful offsets, settlements, deduction, or credits to which Medistar may be entitled. Notwithstanding anything herein to the contrary, such Recapture Liability shall not exceed, in the aggregate, an amount equal to all EIPs that were paid pursuant to this Agreement from the Effective Date to the date of termination (together with interest thereon to be charged at the statutory rate for delinquent taxes as determined by Section 33.01 of the Property Tax Code of the State of Texas, but without the addition of a penalty). The City shall have all remedies for the collection of the Recapture Liability as provided generally in the Tax Code for the collection of delinquent property taxes.

7. Miscellaneous.

7.1 Mutual Assistance. The City and Medistar will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement.

7.2 Representations and Warranties. The City represents and warrants to Medistar that the Program and this Agreement are within its authority, and that it is duly authorized and empowered to establish the Program and enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. Medistar represents and warrants to the City that it has the requisite authority to enter into this Agreement.

7.3 Default. If either the City or Medistar should default in the performance of any obligations of this Agreement, the other party shall provide such defaulting party written notice of the default, and a minimum period of thirty (30) days to cure such default, prior to instituting an action for breach or pursuing any other remedy for

default. If the City remains in default after notice and opportunity to cure, Medistar shall have the right to terminate this Agreement by giving written notice thereof to City and to pursue any remedy at law or in equity for the City's breach. If Medistar remains in default after notice and opportunity to cure, City shall have the right to terminate this Agreement by giving written notice thereof to Medistar and to pursue any remedy at law or in equity for Medistar's breach, in addition to the right of EIP recapture set forth above.

- 7.4 Attorney's Fees. In the event any legal action or proceeding is commenced in a court of competent jurisdiction between the City and Medistar to enforce provisions of this Agreement and recover damages for breach, the prevailing party in such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action, to the extent allowed by law.
- 7.5 Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the EIP. This Agreement may only be amended, altered or revoked by written instrument signed by the City and Medistar.
- 7.6 Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns.
- 7.7 Assignment. Medistar may not assign all or part of its rights and obligations to a third party without the express written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that Medistar may assign this Agreement without the consent of the City to an entity which controls, is controlled by or is under common control with Medistar, any successor entity to Medistar by way of merger, consolidation or other non-bankruptcy corporate reorganization, or an entity which acquires all or substantially all of Medistar's assets, partnership or membership interests, or capital stock.
- 7.8 Amendment. This Agreement may be amended by the mutual written agreement of the parties.
- 7.9 Termination. In the event Medistar elects not to lease the building as contemplated by this Agreement, Medistar shall notify the City in writing, and this Agreement and the obligations on the part of both parties shall be deemed terminated and of no further force or effect.
- 7.10 Notice. Any notice and or statement required and permitted to be delivered shall be deemed delivered by actual delivery, facsimile with receipt of confirmation, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

If to City: City of Round Rock
221 E. Main Street
Round Rock, TX 78664
Attn: City Manager
Phone: (512) 218-5400
Email: lhadley@roundrocktexas.gov

With a required copy to:

Sheets & Crossfield
309 E. Main Street
Round Rock, TX 78664
Attn: Stephan L. Sheets
Phone: (512) 255-8877
Email: steve@scrllaw.com

If to Medistar: Medistar Round Rock Rehab, LLC
7670 Woodway, Suite 160
Houston, TX 77063
Attn: Mark Jang (with copy to Greg Aclin, General Counsel)

Either party may designate a different address at any time upon written notice to the other party.

- 7.11 Interpretation. Each of the parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any party.
- 7.12 Applicable Law. This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in Williamson County, Texas.
- 7.13 Severability. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected. It is also the intention of the parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.
- 7.14 Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

- 7.15 No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.
- 7.16 Force Majeure. Except as otherwise provided herein, an equitable adjustment shall be made for delay or failure in performing if such delay or failure is caused, prevented, or restricted by conditions beyond that Party's reasonable control (a "*force majeure* event"). A *force majeure* event for the purposes of this Agreement shall include, but not be limited to, acts of God, fire; explosion, vandalism; storm or similar occurrences; orders or acts of military or civil authority; litigation; changes in law, rules, or regulations outside the control of the affected Party; national emergencies or insurrections; riots; acts of terrorism; or supplier failures, shortages or breach or delay. Except as otherwise expressly provided, herein, there shall be an equitable adjustment allowed for performance under this Agreement as the result of any event of *force majeure*.
- 7.17 No Joint Venture. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past, present and future officers, elected officials, employees and agents of the City do not assume any responsibilities or liabilities to any third party in connection with the development of the Facility or the design, construction or operation of any portion of the Facility.
- 7.18 Estoppel Certificate. Medistar may request an estoppel certificate from City so long as the certificate is requested in connection with a bona fide business purpose and requests commercially reasonable certifications. City agrees to promptly execute and deliver any estoppel certificate reasonably requested pursuant to this Section 7.18. The certificate, which will upon request be addressed to Medistar, or a lessee, purchaser or assignee of Medistar, shall include, but not necessarily be limited to, statements (qualified to the best knowledge of the City) that this Agreement is in full force and effect without default (or if a default exists, the nature of such default and any curative action which should be undertaken to cure same), the remaining term of this Agreement, and such other matters reasonably requested by the party(ies) to receive the certificate.

EXECUTED to be effective as of the ____ day of _____, 2017 (the "Effective Date").

CITY OF ROUND ROCK, TEXAS,

By: _____
Craig Morgan, Mayor

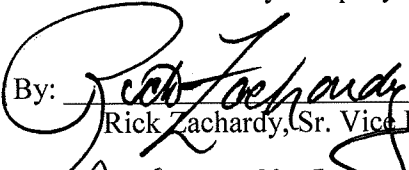
Date: _____, 2017

APPROVED as to form:

Stephan L. Sheets, City Attorney

MEDISTAR ROUND ROCK REHAB, LLC, a
Texas limited liability company

By: _____


Rick Zachardy, Sr. Vice President

Date: AUGUST 30, 2013

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EXHIBIT "A"
TO THE ECONOMIC DEVELOPMENT AGREEMENT

RESOLUTION NO. R-_____

WHEREAS, Medistar Round Rock Rehab, LLC, a Texas limited liability company ("Medistar") has expressed to the City of Round Rock ("City") its desire to construct a facility to the City which will provide jobs and additional tax base to the City, and

WHEREAS, §380.001 Local Government Code provides that a municipality may establish an economic development program ("Program") to promote local economic development and to stimulate business and commercial activity in the municipality, and

WHEREAS, the City Council has determined that the Program described in Exhibit "A" will meet the goals set forth in said §380.001 and will be of mutual benefit to both parties, Now Therefore

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,

That the City offers to Medistar a §380.001 Program in exchange for Medistar locating a facility to the City, and

BE IT FURTHER RESOLVED

That the offer of the Program shall be as generally outlined in Exhibit "A" attached hereto and incorporated herein for all purposes.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551,

Texas Government Code, as amended.

RESOLVED this ____ day of _____, 2017.

CRAIG MORGAN, Mayor

City of Round Rock, Texas

ATTEST:

SARA L. WHITE, City Clerk

EXHIBIT A
TO THE RESOLUTION

ECONOMIC DEVELOPMENT PROGRAM

The terms of the §380.001 Economic Development Program to be offered to Medistar Round Rock Rehab, LLC, a Texas limited liability company ("Medistar") in exchange for Medistar's constructing a facility in the City of Round Rock are as generally outlined below:

1. Medistar's obligations:

1.1. Medistar agrees to construct a building containing 48,000 square feet and located on real property owned by Medistar in Round Rock (the "Facility").

1.2. Medistar agrees to invest at least \$17,000,000 in the construction of the Facility.

2. City's obligations:

2.1. City shall, subject to Medistar's satisfaction of its obligation to invest \$17,000,000 in the construction of a facility, make the following Economic Incentive Payments to Medistar:

(1)	<u>Date</u>	<u>Amount</u>
	30 days after Opening date	\$30,000.00

(2) Reimburse Medistar for roll back taxes, (if any) paid by Medistar to the City.

(3) Waive all site preparation, construction permit, and inspection fees related to the Facility, up to a maximum amount of \$100,000,

(4) Fast track all permit and City certificate requests related to the Facility, at no additional cost to Medistar.

3. The terms and provisions of this Program will be set out in more detail in the Economic Development Program Agreement of even date herewith.

EXHIBIT "B"
TO THE ECONOMIC DEVELOPMENT AGREEMENT

PROPERTY DESCRIPTION ON FOLLOWING PAGES



2017075654 PLAT Total Pages: 3



PLAT MAP RECORDING SHEET

DEDICATOR(s):

AVERY CENTRE DEVCO INC

SUBDIVISION NAME: AVERY CENTRE TOWN CENTRE PHASE 2 LOT 1 BLOCK A

PROPERTY IS DESCRIBED AS: 4.117 ACRES ABEL EAVES SURVEY
ABSTRACT NO. 215

SUBMITTED BY: CITY OF ROUND ROCK

DIGITALLY RECORDED

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS 2017075654

PLAT Fee: \$166.00
08/16/2017 08:59 AM TKIRK

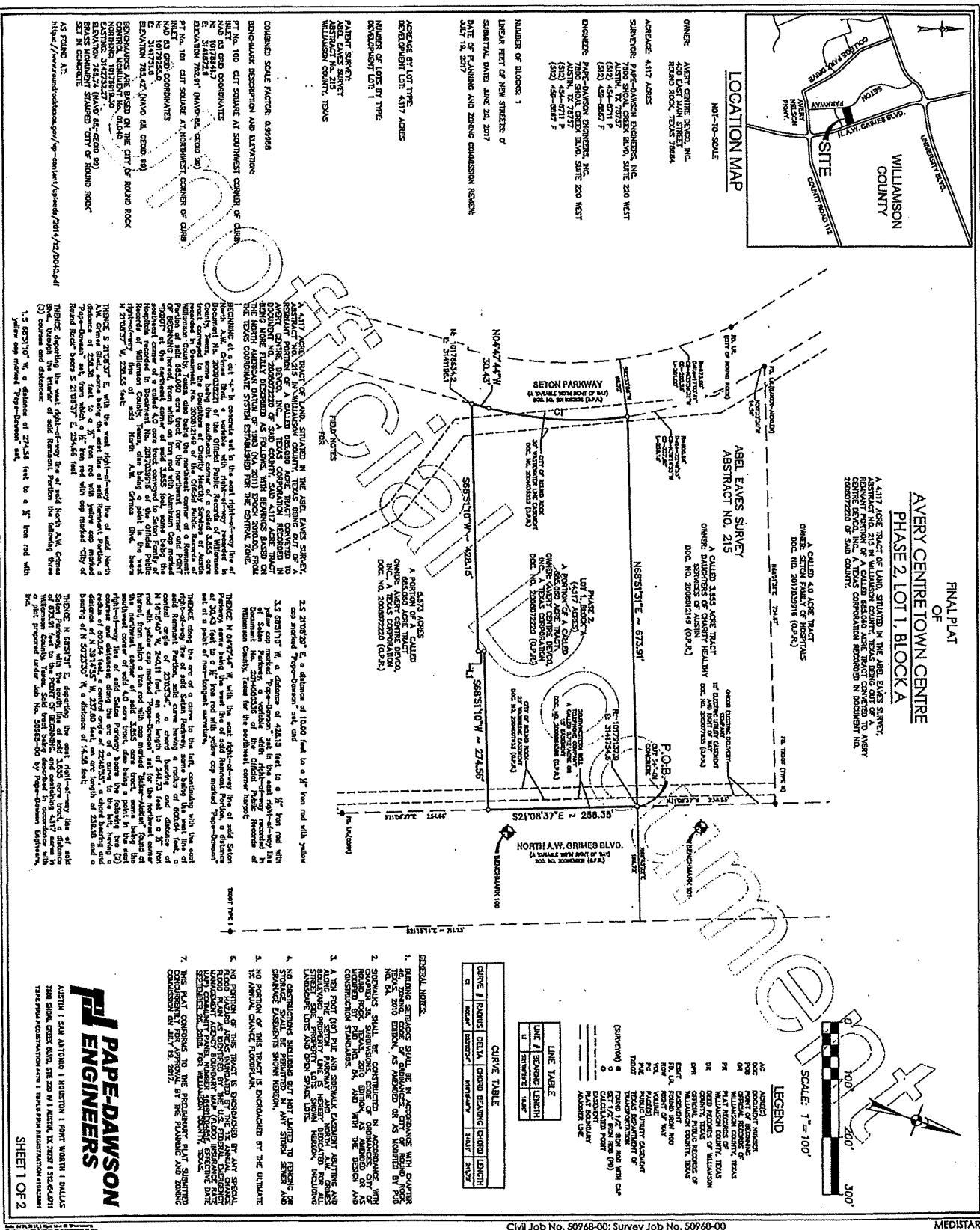


Nancy E. Rister
Nancy E. Rister, County Clerk
Williamson County, Texas

EXHIBIT

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"B"



A 4.117 ACRE TRACT OF LAND, SITUATED IN THE ABEL EVANS SURVEY, ABSTRACT NO. 215 IN WILLAMSON COUNTY, TEXAS BEING OUT OF A REMAINT PORTION OF A CALLED 6663.660 ACRE TRACT CONVEYED TO AMERICA CENTRE DEVCO, INC., A TEXAS CORPORATION RECORDED IN DOCUMENT NO. 2008072220 OF SAID COUNTY.

MEDISTAR