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STATE OF ALABAMA )  
SHELBY COUNTY )

### DECLARATION OF EASEMENT

THIS DECLARATION OF EASEMENT (this "Declaration") is executed as of April 29, 1998, by BAPTIST HEALTH SYSTEM, INC., an Alabama nonprofit corporation (hereinafter called the "Declarant").

#### Recitals

A. The Declarant is the owner of property located in Shelby County, Alabama, and more particularly described on Exhibit A attached hereto (the "Servient Parcel").

B. The Declarant is also the owner of property located in Shelby County, Alabama, and more particularly described on Exhibit B attached hereto (the "Dominant Parcel"). The Servient Parcel and the Dominant Parcel are hereinafter sometimes together referred to as the "Parcels".

C. The Declarant intends to execute a ground lease (the "Ground Lease") in favor of SMCMOB II, L.L.C., an Alabama limited liability company (the "LLC"), pursuant to which the Declarant shall lease to the LLC for a period of forty-one (41) years the Dominant Parcel, upon which the LLC shall develop a professional office building complex. The LLC has requested, and the Declarant wishes to provide, for a means of ingress and egress to the Dominant Parcel across the Servient Parcel, to provide for a right of parking in favor of the LLC upon the Dominant Parcel, and to provide for a temporary construction easement, all as hereinafter provided.

D. The Declarant desires to declare, establish, grant and provide for the benefit of (i) the LLC and any subsequent owner(s) or ground lessee(s) of all, or any portion of all, or any of the Dominant Parcel, and their respective heirs, successors and assigns (hereinafter collectively called the "Owners"), (ii) the Owners' agents, customers, invitees, licensees, employees, servants, contractors, and tenants (and tenants' customers, invitees, licensees, employees, servants, and contractors) (all of the foregoing herein collectively called the "Permittees"), and (iii) the holder or holders of any mortgage now or hereafter constituting a lien against all or any of the Parcels, and the heirs, successors and assigns of any such holder (herein collectively called the "Mortgagees") certain restrictions, rights, obligations, easements and licenses to run with the title to the Servient Parcel and to run with the leasehold interest of the Dominant Parcel as hereinafter set forth.

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CANADA TITLE

## Declaration

NOW, THEREFORE, for the purposes set forth in the foregoing recitals, and for the benefit of the Declarant and the Owners, the Declarant does hereby declare and provide as follows:

1. **Ingress/Egress, Utility, and Drainage Easement.** The Declarant hereby establishes and creates for the benefit of the Dominant Parcel and for the benefit of the Owners, Permittees, and Mortgagees, having from time to time an interest in the Dominant Parcel; and does hereby give, grant, bargain, sell and convey to each such Owner, Permittee, and Mortgagee a non-exclusive, non-perpetual easement, right, license and privilege appurtenant to the Dominant Parcel for the benefit of the Dominant Parcel for (i) the right of passage and use, both pedestrian and automotive, over, across and upon any and all portions of the Servient Parcel (including all roads and/or driveways now or hereafter located on the Servient Parcel) for the purpose of ingress to and egress from the Dominant Parcel (and Declarant shall, at all times, provide access for pedestrian and motor vehicle ingress and egress to and from the Dominant Parcel to a publicly dedicated right of way), (ii) the right to construct, maintain, operate, use and locate utilities, including, but not limited to, electrical lines, gas lines, water lines, sewer lines, cable television lines and telephone lines across and under the Servient Parcel for the purpose of providing utility services, to and from the Dominant Parcel and such an easement is expressly reserved and set apart for such purpose or purposes, and (iii) the right to (x) use all storm and surface drainage pipes, conduits, basins, excavations, and other improvements now or hereafter located on the Servient Parcel, and (y) to otherwise drain surface water across the Servient Parcel. Declarant, Owner or Mortgagee with the prior written consent of Declarant which consent shall not be unreasonably withheld, shall have the right to relocate any of the utilities, provided that such relocation shall be under the Servient Parcel, and that the person undertaking such relocation pay all the costs thereof. The intention of this grant is to place a blanket easement for the purposes stated above on the Servient Parcel, subject to the limitation that said easement shall automatically terminate upon the termination of the Ground Lease, as set forth in Section 7 below.

2. **Parking Easement.** The Declarant hereby establishes and creates for the benefit of the Declarant, the Owners, the Permittees, and the Mortgagees and does hereby give, grant and convey to each and every of the Declarant, the Owners, the Permittees, and the Mortgagees a non-perpetual, non-exclusive easement for the use of any and all paved parking spaces which are from time to time provided on any portion of any or all of the Servient Parcel. The Declarant shall have the right from time to time in its reasonable discretion, to reduce, enlarge, alter or change the construction, lay-out, use, design, size, dimensions and location of the parking areas located on the Servient Parcel; provided, however, that the Declarant shall (i) at all times maintain on the Servient Parcel parking spaces which are adequate and sufficient to serve the buildings and other improvements at any time constructed, erected and lying on the Dominant Parcel, and (ii) in any event, shall not maintain less than the number of spaces required by any applicable law, rule, ordinance, covenant or regulation or by the other provisions of this Agreement or by any lease or other written agreement that affects the Dominant Parcel or any portion thereof.



3. **Construction Easement.** The Declarant hereby establishes and creates for the benefit of the Declarant, the Owners, the Permittees, and the Mortgagees and does hereby give, grant, and convey to each and every of the Declarant, the Owners, the Permittees, and the Mortgagees a temporary, non-exclusive easement on, over and across the Servient Parcel in connection with and as necessary to cause the construction of a professional office building to be constructed and located on the Dominant Parcel, such temporary easement to terminate on the earlier of (i) the date the LLC (or, if applicable, any subsequent owner and/or ground lessee of the Dominant Parcel) files of record in the probate records of Shelby County, Alabama, a notice that such construction has been substantially completed, or (ii) issuance by the City of Alabaster of a certificate of occupancy as to the professional office building.

4. **Upkeep and Maintenance of Servient Parcel.** The Declarant shall at all times have a duty to maintain the Servient Parcel in a manner that will enable the Owners, Permittees, and Mortgagees full use of the rights and easements created hereby, which duty shall include, without limitation, an obligation to (i) repair and maintain the roads, driveways, parking spaces, and parking areas, (ii) remove all debris, (iii) clean and maintain the Servient Parcel and (iv) perform all other acts necessary to enable the Owners and Mortgagees to have a safe and unobstructed passage across the Servient Parcel and a safe and unobstructed usage of the parking spaces. If Declarant fails to perform its obligations to maintain and repair as aforesaid after reasonable notice from any of the Owners of the condition requiring maintenance and repair, such Owner(s) may perform such maintenance and repair, and the Owner(s) and/or the Permittees are granted a temporary non-exclusive easement on, over and across the Servient Parcel from time to time as may be reasonably necessary to effectuate such maintenance and repair. Upon written demand, the Declarant shall reimburse such Owner(s) all reasonable costs and expenses incurred by the Owner(s) in connection with such maintenance and repair.

5. **Modification.** The terms, covenants, conditions and provisions of this Declaration may be extended, abrogated, modified, rescinded or amended in whole, or in part only, with the prior written consent of the Declarant, the Mortgagees and the Owners; but subject to such consent, the Declarant expressly reserves the right to extend, abrogate, modify, rescind or amend the grants herein by an instrument in writing duly executed by the appropriate parties in interest and recorded in the Office of the Judge of Probate of Shelby County, Alabama.

6. **Easements Appurtenant, Term, etc.** The easement, rights, privileges and benefits created or granted under this Declaration and each provision hereof shall be enforceable by the Declarant, the Mortgagees and the Owners by injunction, or by specific performance, and shall be deemed a covenant running with the title to the Servient Parcel and an easement appurtenant to the Dominant Parcel running with the leasehold interest under the Ground Lease until terminated pursuant to Section 7 herein. This Declaration shall be binding upon, and inure to the benefit of, the respective heirs, legal representatives, successors and assigns of the Declarant, the Mortgagees and the Owners as herein provided.

7. **Termination of Easement.** The easement, rights, privileges and benefits created or granted under this Declaration and each provision hereof shall automatically terminate at such

time as the Ground Lease shall terminate; provided, however, that if the Ground Lease is renewed, extended or otherwise modified, this Declaration shall remain in effect until such time as the Ground Lease, as renewed, extended or modified, is terminated.

8. **No Public Dedication.** This Declaration is not intended, and shall not be construed, to dedicate any easements to the general public or to grant to the general public any rights whatsoever.

9. **Severability.** If any term, covenant or restriction established by this Declaration shall be invalid or unenforceable, the remainder of this Declaration shall not be effected thereby, and each term, covenant and restriction shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the Declarant has executed this Declaration on the day and year first above written.

BAPTIST HEALTH SYSTEM, INC.

By: Sharon D. Johnston  
Its: Vice President

STATE OF ALABAMA     )  
COUNTY OF Jefferson     )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Greg Johnston, whose name as Vice president of **BAPTIST HEALTH SYSTEM, INC.**, an Alabama nonprofit corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this 29th day of April, 1998.

Martha R. Mims

Notary Public

[AFFIX SEAL]

MY COMMISSION EXPIRES MARCH 30, 2002

My Commission Expires: \_\_\_\_\_

## **EXHIBIT "A"**

### **DESCRIPTION OF SERVIENT PARCEL**

A parcel of land situated in the Northwest 1/4 of the Northwest 1/4 of Section 36, Township 20 South, Range 3 West, and the Northeast 1/4 of the Northeast 1/4 of Section 35, Township 20 South, Range 3 West, in Shelby County, Alabama, and being more particularly described as follows:

BEGIN at the Southwest corner of the Northwest 1/4 of the Northwest 1/4 of Section 36, Township 20 South, Range 3 West, said point being a crimped iron pipe; thence South 88 deg. 34 min. 38 sec. East along the South boundary of said NW 1/4 of the NW 1/4 a distance of 316.17 feet; thence run along the arc of a curve to the right having a central angle of 90 deg. 05 min. 26 sec. and a radius of 35.00 feet in an Easterly to Southerly direction 55.03 feet; thence South 01 deg. 33 min. 20 sec. West a distance of 13.73 feet; thence South 88 deg. 26 min. 40 sec. A distance of 254.49 to a point; thence North 01 deg. 33 min. 20 sec. East a distance of 62.24 feet to a point; thence North 16 deg. 02 min. 33 sec. East for a distance of 197.45 feet to a point; thence run North 73 deg. 57 min. 27 sec. West for a distance of 222.35 feet to the Westerly right of way line of Main Street of the First Addition to Cedar Grove Estates as recorded in Map Book 3, Page 141 in the Probate Office of Shelby County, Alabama; thence North 15 deg. 36 min. 24 sec. East along said right of way a distance of 91.89 feet to the Southeast corner of Lot 13 of the aforementioned First Addition; thence North 74 deg. 09 min. 08 sec. West along the Southwesterly boundary of said Lot 13 a distance of 94.88 feet; thence North 05 deg. 45 min. 15 sec. West along the Westerly boundary of Lot 13 a distance of 149.57 feet; thence North 73 deg. 55 min. 40 sec. West 243.14 feet to the Easterly right of way of U.S. Highway 31; thence South 15 deg. 49 min. 46 sec. West 150.53 feet along said right of way to the beginning of a curve to the left concave to the Southeast having a radius of 5629.65 feet; thence left through a central angle of 04 deg. 32 min. 59 sec. Southwesterly 447.03 feet along said curve to the intersection of said right of way and the South boundary of the NE 1/4 of the NE 1/4 of Section 35, Township 20 South, Range 3 West; thence South 88 deg. 34 min. 38 sec. East along said South boundary 14.42 feet to the POINT OF BEGINNING; being situated in Shelby County, Alabama.

LESS AND EXCEPT the property described in Exhibit "B"; and  
LESS AND EXCEPT that portion located within the right-of-way of 2ND Street.



**EXHIBIT "B"**

**LEGAL DESCRIPTION**

A parcel of land situated in the Northwest 1/4 of the Northwest 1/4 of Section 36, Township 20 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at a crimped iron pipe accepted as the Southwest corner of the Northwest 1/4 of the Northwest 1/4 of Section 36, Township 20 South, Range 3 West, Shelby County, Alabama, and run in an Easterly direction along the South line of said 1/4-1/4 Section 204.90 feet; thence deflect  $76^{\circ}56'27''$  and run to the left in a Northerly direction 149.06 feet to the POINT OF BEGINNING of the herein described parcel; thence continue along the last described course in a Northerly direction 216.90 feet; thence turn an interior angle of  $90^{\circ}00'00''$  and run to the right in an Easterly direction 108.00 feet; thence turn an interior angle of  $90^{\circ}00'00''$  and run to the right in a Southerly direction 216.90 feet; thence turn an interior angle of  $90^{\circ}00'00''$  and run to the right in a Westerly direction 108.00 feet, more or less, to the POINT OF BEGINNING.

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