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STATE OF ALABAMA )  
COUNTY OF SHELBY )

**GROUND LEASE**

**THIS GROUND LEASE** (the "Lease"), made as of the 29th day of April, 1998, by and between Baptist Health System, Inc., an Alabama nonprofit corporation (hereinafter called "Lessor"), and SMCMOB II, L.L.C., an Alabama limited liability company (hereinafter called "Lessee").

**WITNESSETH:**

That in consideration of the rents to be paid hereunder and of the covenants and agreements herein contained and to be performed, the parties agree as follows:

**1. Demised Premises and Term of Lease.**

Subject to the terms, conditions and covenants hereinafter set forth, Lessor hereby leases, demises and lets unto Lessee, and Lessee hereby takes and leases from Lessor, that certain parcel of real property situated in the County of Shelby, State of Alabama, more particularly described in Exhibit A hereto.

Lessor warrants and represents that it is the owner in fee simple absolute of such real property, subject only to:

(a) All taxes for the year 1998 and subsequent years not yet due and payable.

(b) Coal, oil, gas and other mineral interests in, to or under the demised premises.

(c) Conditions of title set forth in First American Title Insurance Company Commitment No. 115313 dated 4/29, 1998.

together with all rights and privileges appurtenant thereto (hereinafter called the "demised premises").

**TO HAVE AND TO HOLD** the demised premises for and during an initial term of forty-one (41) years commencing on the 29th day of April, 1998, and ending on the 28th day of April, 2040, unless this Lease shall sooner end or terminate as provided herein (the "Initial Term").

Inst # 1998-15829  
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SHELBY COUNTY JUDGE OF PROBATE  
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CALHOUN TITLE

Lessee shall have the option to extend the term of this Lease for an additional ten (10) year period exercisable by written notice to Lessor given on or before July 1, 2039 (the "Extended Term"). Except for the "Basic Rent" (as such term is defined in paragraph 2 of this Lease) the terms of this Lease shall remain unchanged for the Extended Term. Basic Rent for the Extended Term shall be an amount per annum equal to seven and 686/1000 percent (7.686%) of the fair market value of the demised premises, exclusive of the buildings and other improvements thereon as of the first day of the Extended Term established by agreement of the parties or by arbitration in accordance with the provisions and procedures set forth in clauses (c)(i) through (c)(vii) of paragraph 15 of this Lease. Basic Rent for the Extended Term shall be payable in equal monthly installments in advance on the first day of each month during the Extended Term.

As used herein, the term "lease year" shall mean a period commencing on the 1st day of January and ending on the next succeeding 31st day of December. The use of the word "term" herein shall be deemed to include both the Initial Term and, if applicable, the Extended Term.

## **2. Basic Rent.**

(a) Lessee covenants and agrees to pay to Lessor, as net Basic Rent for the demised premises for the Initial Term, the sum of One Hundred Three Thousand Seven Hundred Forty-Nine and NO/100 Dollars (\$103,749.00) per annum, payable on or before the first day on which rent is due under the occupancy lease of even date herewith between Lessee as lessor and Lessor as lessee (the "Building Lease") and thereafter on the first day of each lease year during the Initial Term (hereinafter called the "Basic Rent"). Basic Rent will be prorated for any partial lease year. Basic Rent has been calculated based upon a fair market value of the demised premises and related site improvements amortized over forty-one (41) years at an interest rate of seven and one quarter percent (7.25%) which results in the payment of principal and interest equal to seven and 686/1000 percent (7.686%). All Basic Rent (and all other rents and charges payable by Lessee to Lessor hereunder) shall be payable to Lessor at Shelby Baptist Medical Center, P.O. Box 488, Alabaster, Alabama 35007 (Attn: Finance Department), or at such other address as Lessor may, from time to time, designate in writing.

(b) The Basic Rent shall be absolutely net to Lessor. Lessee covenants to pay Lessor an Additional Rent equal to all Impositions, as defined in paragraph 3 hereof. The obligation of Lessee to pay the Basic Rent and Additional Rent and all other amounts payable to Lessor hereunder, as and when due, is and shall be without deduction or setoff, and Lessee hereby waives all rights now or hereafter conferred by law to quit, terminate or surrender this Lease or the demised premises, or any part thereof, and to receive any abatement, suspension, deferment or reduction of or relief from the Basic Rent or the Additional Rent payable under this Lease.

## **3. Additional Rent.**

(a) Lessee covenants and agrees to pay and discharge as additional rent hereunder (hereinafter called the "Additional Rent"), before delinquent, all taxes, assessments, water fees, sewer fees, levies or other charges, general, special, ordinary, extraordinary and otherwise, of



every kind and character which are, or may, during the term hereby created, be levied, charged, assessed or imposed upon or against the demised premises or any buildings or improvements which are now, or may be, placed thereon, or any of Lessee's personal property located thereon, or which may be levied or imposed upon the leasehold estate hereby created (collectively, "Impositions"), and will deliver to Lessor all receipts, or duplicates thereof, within fifteen (15) days after the payment evidenced thereby, and will at all times save Lessor harmless from the payment thereof or the payment of any claims or demands becoming chargeable against or payable in respect of the demised premises or the buildings or improvements thereon, or the use and occupancy thereof. At the end of the term of this Lease, such Impositions to be paid by Lessee shall be prorated on the basis of the fiscal year of the taxing authority in question, so that at the end of the term of this Lease, as to any Impositions levied or assessed for said fiscal year extending beyond the end of such term, Lessee will pay under this paragraph 3 only such proportion of said Impositions as the portion of said fiscal year preceding the end of said term bears to the entire said fiscal year. Any payments by Lessee pursuant to this paragraph 3(a) shall constitute Operating Rent pursuant to the terms of the Building Lease.

(b) Anything herein to the contrary notwithstanding, Lessee shall not be required to pay any franchise, capital levy or transfer tax of Lessor, or any income, excess profits or revenue tax or any other tax, assessment, charge or levy upon the rent payable by Lessee under this Lease, or any tax which may, at any time during the continuance of this Lease, be required to be paid on any rent, gift, demise, deed, mortgage, descent or other alienation of any part or all of the estate of Lessor in and to the demised premises and any buildings or improvements which are now, or may be, placed thereon, except as hereinafter provided. If Lessee shall be required by law to pay, and pursuant thereto does pay, any such tax, assessment or charge specified in this subparagraph 3(b), Lessor shall, upon request, reimburse Lessee for any such payments; provided, however, that if at any time during the term hereof under the laws of the United States of America or any state or political subdivision thereof in which the demised premises are situated, (i) a tax on rent or other charge, by whatever name called, is levied, assessed or imposed against Lessor or the rent payable hereunder to Lessor as a substitute in whole or in part for the tax on real estate, Lessee, to the extent that such substitute tax or other charge relieves Lessee from the payments hereinbefore provided in subparagraph 3(a) above, shall pay such tax or other charge as soon as the same becomes due and payable, or (ii) a tax or excise measured by the rent payable hereunder is imposed upon Lessor for the privilege of doing business in any municipality or county or any other political subdivision of the State of Alabama, Lessee shall pay such tax or excise as soon as the same becomes due and payable.

(c) Subject to the provisions of subparagraph 14(a) hereof, Lessor shall have the right at all times during the term hereof to pay any taxes, assessments, sewer or water fees, levies, or other charges upon the demised premises, and to pay, cancel and clear off all tax sales, liens, charges and claims upon or against the demised premises or any buildings or improvements that are now, or may be, placed thereon, and to redeem said premises from the same, or any of them, from time to time, without being obligated to inquire as to the validity of the same, except for nongovernmental liens. Any sum so paid by Lessor shall become Additional Rent due and payable by Lessee on the next day after any such payment by Lessor, together with interest

thereon at the rate of fifteen percent (15%) per annum from such date to the date of payment thereof by Lessee to Lessor.

#### **4. Condition of Property; State of Title.**

Except as provided in this Lease, Lessee accepts the demised premises in their present condition, without any representation or warranty by Lessor as to the condition, use or operation thereof. Lessor makes no covenant, representation or warranty as to the suitability of the demised premises for any purpose. Lessor covenants and warrants that Lessee shall quietly enjoy the demised premises during the term of this Lease without molestation by Lessor or by anyone claiming by, through or under Lessor. THE FOREGOING COVENANT OF QUIET ENJOYMENT IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED BY LAW OR OTHERWISE, AND NO WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR PURPOSE OF THE FACILITY (HEREINAFTER DEFINED) OR ANY FIXTURES, EQUIPMENT, APPLIANCES OR PERSONAL PROPERTY THEREON, OR THE DEMISED PREMISES OR ANY OTHER IMPROVEMENTS THEREON IS MADE BY LESSOR. FURTHERMORE, THE COVENANT OF QUIET ENJOYMENT HEREIN MADE IS MADE ONLY TO LESSEE, AND NOT TO ANY SUBLESSEE OR ASSIGNEE OR LESSEE OR TO ANY OTHER THIRD PARTY, AND SHALL NOT BE DEEMED TO RUN WITH THE DEMISED PREMISES IN FAVOR OF ANY SUBSEQUENT ASSIGNEE OR SUBLESSEE OF LESSEE EXCEPT FOR ANY ASSIGNEE OR SUBLESSEE OF LESSEE APPROVED BY LESSOR PURSUANT TO THE PROVISIONS OF PARAGRAPH 11(a), (b), OR (c) OF THIS LEASE TO THE EXTENT PROVIDED FOR IN SAID PARAGRAPH 11 (a), (b) OR (c); PROVIDED, HOWEVER, THE LENDER (AS HEREINAFTER DEFINED IN PARAGRAPH 11(B)) AND ALL ASSIGNEES OR SUBLESSEES OF THE DEMISED PREMISES FOLLOWING ANY TERMINATION OF THE BUILDING LEASE AND/OR FORECLOSURE (OR DEED IN LIEU OF FORECLOSURES) ARE AUTOMATICALLY ENTITLED TO THE COVENANT OF QUIET ENJOYMENT SET FORTH HEREIN.

#### **5. Use; Description of Improvements.**

Lessee agrees to use and occupy the demised premises for the purpose of constructing, maintaining and operating a medical professional office building or if Lessor is not then operating a health care facility on real property immediately adjacent to the demised premises, other use meeting the criteria now set forth in the City of Alabaster, Alabama, zoning classification "Business District 3 (B-3)." The building shall contain approximately 100,000 gross square feet together with adequate adjacent parking and ingress and egress pursuant to a separate easement with Lessor meeting all applicable Building Code requirements as more particularly described in the plans and specifications therefore, copies of which have been submitted to Lessor (the "Facility"). All plans and specifications for the Facility must be approved by Lessor as provided for in paragraph 9 of this Lease. Lessee agrees that the demised premises shall not be used for any purpose other than those specified above without having first obtained the consent in writing of Lessor, which consent shall not be unreasonably



withheld. Consent regarding an additional facility or separate structure may be withheld at the sole discretion of the Lessor. In no event, however, shall the demised premises be used:

(a) for any purpose or use not at the time permitted by the then applicable zoning laws or ordinances; or

(b) for any purpose or use (nor shall any activity be carried on upon the demised premises):

(i) which results in the emanation or giving off of offensive gas, smoke, fumes, dust, odors, waste products, noise or vibrations;

(ii) which in any manner causes, creates or results in a nuisance; or

(iii) which is of such a nature that it involves substantial hazard, such as the manufacture or use of explosives, chemicals or products that may explode and the like; provided that Lessee may use commercial gases and chemicals such as natural gas, hydrogen, acetylene, gasoline and the like in quantities and in a manner not prohibited under this paragraph 5.

(c) Lessee acknowledges that Lessor offers a variety of services within the campus of Shelby Medical Center. To avoid the duplication of such services Lessee agrees, subject to the limitations and qualifications set forth in this subparagraph 5(c), that without first obtaining written approval from Lessor, Lessee will not offer or permit the offering of the following categories of services at the Facility:

(i) mammography;

(ii) sonography;

(iii) endoscopy;

(iv) general radiography or fluoroscopy; or

(v) nuclear medicine.

Lessor agrees that the foregoing restrictions shall not apply to any services provided within a physician or physician's group practice if the service is provided solely to patients of such practice (excluding patients referred to such practice by others for the performance of such services).

(d) Lessee further covenants and agrees that the Facility shall not be used to offer retail services relating to the sale or lease of medical equipment, home health products, or infusion therapy, except when offered as an incidental part of a retail pharmaceutical store.

(e) Lessee further covenants and agrees that as long as Lessor, or its successors or assigns, operates a hospital within the campus of Shelby Medical Center, the use of the Facility shall be subject to the following limitations to avoid duplication of services with those offered or to be offered at Shelby Medical Center (which restrictions shall apply notwithstanding the limitations and qualifications contained in subparagraph (c) of this paragraph 5 unless such uses shall have been first approved in writing by Lessor): Diagnostic or treatment services utilizing any one or more of the following technologies: (1) magnetic resonance imaging, (2) computerized tomography, (3) linear acceleration, or (4) any equipment or system of items of equipment the cost of which exceeds, in the aggregate \$500,000.00 (said sum to be adjusted for inflation over the Term as provided for in Exhibit B to this Lease).

All subleases by Lessee of space in the Facility shall be subject to the prior written approval of Lessor, which approval may be withheld by Lessor, in its sole discretion, irrespective of whether any proposed sublease would involve a use that would be prohibited under the terms of subparagraphs (a) through (e) of this paragraph 5 (the "Use Restriction(s)"); provided, however, that if Lessor refuses to give its approval to a proposed sublease that would not involve a violation of a Use Restriction, Lessor shall agree, at the option of Lessee, to sublease such space upon the applicable terms provided for in the rejected sublease.

## **6. Title to Improvements.**

(a) Title to all buildings and improvements that are now, or may from time to time be, located on the demised premises, and all furniture, fixtures, equipment and machinery that may from time to time be used or intended to be used in connection with the demised premises, shall be and remain in Lessee until the expiration or termination of this Lease by the terms hereof, or by default or breach on the part of Lessee, or otherwise. Except as is otherwise provided by paragraph 15 hereof, upon expiration, termination, default or breach as aforesaid, title to said buildings, structures, improvements, alterations, additions, fixtures, equipment, motors and machinery on the demised premises shall pass to and vest in Lessor without cost or charge to Lessor, with the exception of such personal property items as are usually classified as furniture and trade fixtures which are to remain the property of Lessee if removed prior to the expiration of the Lease; otherwise, title thereto shall vest in Lessor.

(b) Except as is otherwise provided by paragraph 6(a) above and paragraph 15 hereof, Lessee agrees on the expiration or prior termination of this Lease to execute any and all deeds, bills of sale, assignments and other documents which in Lessor's sole judgement may be necessary or appropriate to transfer or evidence clear title to the buildings, structures, improvements, alterations, additions, fixtures, equipment, motors and machinery on the demised

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premises in or to Lessor, and hereby appoints Lessor the irrevocable attorney-in-fact of Lessee to execute and deliver for and on behalf of Lessee any such instrument.

**7. Permits, Licenses, Etc.**

Lessor will from time to time execute and deliver all applications for permits, licenses or other authorizations required by the municipal, county, state or federal authorities, or required in connection with the construction, reconstruction, repair or alteration of any buildings or improvements now or hereafter placed on the demised premises, and will execute, acknowledge and deliver any and all instruments required to grant rights-of-way and easements in favor of municipal authorities or public utility companies incident to the installation of water lines, fire hydrants, sewers, electricity, telephone, gas, steam and other facilities and utilities reasonably required for the use and occupancy of the Facility and the demised premises. Lessee shall reimburse Lessor for any sum paid by Lessor in respect of the matters contained in this paragraph, including reasonable attorney's fees.

**8. Repairs, Governmental Regulations, Waste and Advertising.**

(a) Lessee shall during the term of this Lease:

(i) keep and maintain the Facility and all buildings and improvements which are now, or may hereafter be erected on the demised premises and all appurtenances thereto in good and neat order and repair, taking into consideration the age of the Facility and the standard of the general locale, and shall allow no nuisances to exist or be maintained thereon. Lessee shall likewise keep and maintain the grounds, sidewalks, and landscaped areas in good and neat order and repair. Lessor shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Facility and the demised premises or any buildings or improvements thereon, and Lessee hereby expressly waives all rights to make repairs at Lessor's expense; and

(ii) comply with and abide by all federal, state, county, municipal and other governmental statutes, ordinances, laws and regulations affecting the Facility and the demised premises and the buildings and improvements thereon, or any activity or condition on or in the demised premises.

(b) The cost of performing the obligations set forth in paragraph 8(a) shall be paid by Lessee and shall constitute a part of Operating Rent to be paid by Lessor as the lessee under the Building Lease.

(c) Lessee agrees that it will not commit or permit waste upon the demised premises other than to the extent necessary for the removal of any buildings or improvements upon the demised premises for the purpose of constructing and erecting other buildings and improvements thereon. Lessee agrees that it will not, without first having obtained the consent in writing of Lessor, remove or cause or authorize any other person to remove, any material amount of earth,

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rocks, gravel or the like from the demised premises; provided, however that site preparation on the demised premises reasonably necessary for the construction of the Facility is hereby approved by Lessor.

(d) Lessee will not construct or place any sign on the demised premises without the prior written approval of Lessor, which approval shall not be unreasonably withheld.

**9. Improvements, Changes, Alterations, Demolition and Replacement by Lessee.**

Lessee shall have the right at any time and from time to time during the term of this Lease to make improvements to the demised premises and such changes and alterations, structural or otherwise, to the Facility or to any buildings, improvements, fixtures and equipment on the demised premises, including demolition and replacement, as Lessee shall deem necessary or desirable, which improvements, changes and alterations (other than changes or alterations of movable trade fixtures and equipment) shall be made in all cases subject to the following conditions which Lessee covenants to observe and perform:

(a) No improvement, change or alteration, nor any demolition and replacement, shall be undertaken until Lessee shall have procured and paid for, so far as the same may be required from time to time, all municipal and other governmental permits and authorizations of the various municipal departments and governmental subdivisions having jurisdiction, and Lessor agrees to join in the application for such permits or authorizations whenever such action is necessary.

(b) So long as the Building Lease is in effect, no improvement, change or alteration and no demolition or replacement, shall be undertaken until plans and specifications have first been submitted to and approved by Lessor, which approval will not be unreasonably withheld. This requirement shall be applicable to, but not be limited to, the initial plans and specifications for the construction of the Facility. Lessor, by approving such plans and specifications, shall assume no liability or responsibility for any defects in architectural or engineering design or for any defect in any structure constructed from said plans and specifications.

(c) All improvements, changes and alterations requiring Lessor's approval hereunder shall be conducted under the supervision of an architect or engineer who shall be reasonably satisfactory to Lessor.

(d) All improvements, changes and alterations and any demolition and replacement when completed shall be of such a character as not to reduce, or otherwise adversely affect, the value of the buildings, equipment and improvements on the demised premises and the adjacent health care facility owned by Lessor immediately before any change or alteration, nor to diminish the general utility of such buildings, equipment or improvements for the uses set forth in paragraph 5 hereof.

(e) All work done in connection with any improvement, change, alteration or demolition and replacement shall be done promptly and in a good and workmanlike manner and



in compliance with all laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments and the appropriate departments, commissions, boards and officers thereof. All such work shall be at the sole cost and expense of Lessee and, upon completion thereof, shall be free and clear of all liens and encumbrances of any nature whatsoever, including mechanics' liens, except as permitted by paragraph 11 hereof. The work with respect to any improvement, change, alteration or demolition and replacement shall be prosecuted with reasonable dispatch, delays due to strikes, lockouts, acts of God, inability to obtain labor or materials, governmental restrictions, or similar causes beyond the reasonable control of Lessee excepted. Workmen's compensation insurance covering all persons employed in connection with the work and with respect to whom death or injury claims could be asserted against Lessor, Lessee or the demised premises, and general liability insurance for the mutual benefit of Lessee and Lessor with limits of not less than One Million Dollars (\$1,000,000.00) in the event of injury to one person and of not less than Two Million Five Hundred Thousand Dollars (\$2,500,000.00) in the event of injury to any number of persons in any one accident, and with limits of not less than One Million Dollars (\$1,000,000.00) for property damage, shall be maintained by Lessee, or Lessee's contractor, at Lessee's sole cost and expense, at all times when any work is in process in connection with any improvement, change, alteration or demolition and replacement. All such insurance shall be in a company or companies authorized to do business in Alabama and satisfactory to Lessor, and Lessor shall be named as an additional insured on any policy of such insurance.

(f) Expenditures pursuant to this paragraph 9 shall be paid by Lessee and shall constitute part of Operating Rent to be paid by Lessor as lessee under the Building Lease.

#### **10. Fire and Other Casualty.**

(a) No loss or damage by fire or other casualty, resulting in either partial or total destruction of any building or improvement on the demised premises, shall operate to terminate this Lease, or to relieve or discharge Lessee from the payment of rents or amounts collectible as rent as they become due and payable, or from the performance and fulfillment of any of Lessee's obligations and undertakings herein. "Other casualty", as herein used, among other things, shall include loss or damage resulting from causes unknown, uprisings, acts of God, and any terrorist individual or group or common enemy.

(b) If any building or improvements now, or hereafter, placed on the demised premises or any part thereof, or any furniture, fixtures, equipment and machinery used or intended to be used in connection with the demised premises, at any time or times during the continuance of this Lease, shall be damaged or destroyed by fire or other casualty, Lessee, with all reasonable diligence, to the extent that insurance proceeds are available as provided in paragraph 12, shall:

(i) repair, reconstruct or replace such buildings or improvements upon the same general plans and dimensions as before the occurrence of such fire or other casualty or with such changes or alterations as may be made in conformity with paragraph 9 hereof; and

(ii) repair, reconstruct or replace such furniture, fixtures, equipment and machinery with like quality and value as before the occurrence of such fire or other casualty or with such changes or alterations as may be made in conformity with paragraph 9 hereof.

Any such repair, reconstruction or replacement shall be at the sole cost and expense of Lessee, and, upon the completion thereof, shall be free and clear of all liens and encumbrances of any nature whatsoever, including mechanics' liens, except as permitted by paragraph 11 hereof.

**11. Assignment, Hypothecation of Leasehold and Subletting; First Refusal.**

Except as provided in this paragraph 11, Lessee's leasehold interest under this Lease is non-assignable without the prior written consent of Lessor, which consent shall not be unreasonably withheld, provided, however, that Lessor's consent shall not be withheld to a proposed assignment to a "member of the family of James Milton Johnson" as described in paragraph 26 of this Lease and provided further if Lessor reasonably believes that a proposed assignment would be to a person who is a "disqualified person" within the meaning of Section 4958(f)(1) of the Internal Revenue Code of 1986, as amended, Lessor's refusal to consent to the assignment will not be deemed unreasonable. In any event, the consent by Lessor to any proposed assignment of the Lease, including any proposed assignment of such interest, shall be subject to all of the following conditions: (i) that the proposed assignment be to a person, firm or corporation whose financial responsibility is reasonably satisfactory to Lessor (approval of such assignee by an institutional Lender as hereinafter defined shall be deemed to satisfy such condition), (ii) that there is no existing default on the part of Lessee in the performance or observance of the covenants and conditions of this Lease, (iii) that any assignment shall be in writing, duly executed and acknowledged by Lessee and the assignee, in form satisfactory to Lessor, providing that the assignee assumes and agrees to carry out and perform all the terms, covenants and conditions of this Lease on the part of Lessee to be carried out and performed, and (iv) that an executed original of such assignment shall be delivered to Lessor. Lessor's consent to any assignment under this paragraph 11(a) shall not be deemed to release Lessee from any of its obligations under this Lease.

(b) Lessor agrees that Lessee may at any time and from time to time during the term hereof hypothecate the leasehold estate created hereby to establish a first lien thereon as security for any loan obligation incurred by Lessee, provided, however, that such first mortgage or first security interest shall be in compliance with subparagraph (e) of this paragraph 11 (said first mortgagee or other holder of a first security interest being herein referred to as "Lender"), and further provided that Lessee shall furnish Lessor with certified copies of any such first mortgage or other first security instrument, and as - executed copies of any other loan documents executed in connection therewith. The Lender and all assignees or sublessees of the Lender following any termination of the Building Lease and/or foreclosure (or deed in lieu of foreclosure) automatically are entitled to the benefits of the covenant of quiet enjoyment set forth in paragraph 4. Lessor consents to the assignment of this Lease and the leasehold interest created hereby to any Lender upon foreclosure or other exercise by such Lender of its remedies under its leasehold mortgage or other security instrument, provided that (i) Lessor does not elect to



cure any default under such first mortgage or other first security instrument and purchase the same from the Lender pursuant to subparagraph (e) of this paragraph 11, and (ii) the form of the assignment and the assignee's agreement conform with all of the requirements of subparagraph 11(a) above. In the event Lessor does not elect to cure any default under such first mortgage or other first security instrument, then the restrictions as are set forth in paragraph 5, subparagraph (c), and the right to review plans and specifications set forth in paragraph 9(b) shall cease and be of no further force and effect. No second mortgage or other second lien on Lessee's leasehold interest under this Lease shall be permitted without Lessor's prior written consent, which consent shall be at Lessor's sole discretion, except that such consent shall not be unreasonably withheld as to a second mortgage for capital improvements to the leasehold property or for any other purpose if the total debt encumbering the Lessee's leasehold interest does not exceed the fair market value of that interest as determined in an appraisal reasonably acceptable to Lessor and paid for by Lessee; provided, however, that Lessee shall furnish Lessor with copies of any such second mortgage, duly certified by the Probate Judge of Shelby County, and of any loan documents, contracts or agreements executed in connection therewith. No second mortgage or other second lien on Lessee's leasehold interest under this Lease shall be permitted without the consent of the Lender if that consent is required under the terms of the first mortgage.

(c) Lessee, with the prior written consent of Lessor which consent will not be unreasonably withheld, may at any time and from time to time during the term of this Lease, sublet in whole or in part its leasehold estate; provided, however, that (i) there is no existing default on the part of Lessee in the performance or observance of the covenants of this Lease, and (ii) a copy of the executed sublease be delivered to Lessor, together with the name and address of the sublessee therein named. Each sublease pursuant to this subparagraph 11(c) shall provide, if required by Lessor, that if Lessor terminates this Lease under the provisions of paragraph 17 hereof, or otherwise, the sublessee named therein will attorn to Lessor under the terms and conditions of such sublease but that Lessor may at any time thereafter terminate such sublease upon thirty (30) days written notice to such sublessee.

(d) The rights of any mortgagee or other assignee for security purposes under subparagraph 11(b) above, or any sublessee under subparagraph 11(c) above, shall be subject and subordinate to the terms of this Lease; provided, however, that such persons shall not be liable to perform the obligations of Lessee under this Lease after any such person ceases to be an owner of all or any portion of the leasehold estate created hereby. No consent of Lessor under the provisions of subparagraphs 11(a), (b), or (c) above shall relieve Lessee of any obligation hereunder.

(e) Any first mortgage or other first security interest with respect to Lessee's leasehold interest under this Lease shall provide that in the event of any default in any obligation secured thereby, and prior to any action by the Lender to foreclose or otherwise enforce the lien of the same, that the Lender shall first give Lessor thirty (30) days prior written notice of such event of default, and Lessor shall thereupon have the option, exercisable by written notice by Lessor to such Lender within said thirty (30) day period, to: (i) cure said default, provided that the same may be cured by the payment of money, in which event any sums so advanced by

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Lessor together with its costs, including attorney's fees, shall be deemed to be Additional Rent at once due and payable by Lessee to Lessor, together with interest thereon at the rate of fifteen percent (15%) per annum from the date of each advance and the incurring of each such expense, or (ii) purchase such first mortgage or other first security instrument from such Lender together with the obligation secured thereby for a purchase price equal to the then unpaid balance of principal and accrued interest on any indebtedness secured thereby but not including prepayment fees or charges, if any. In the event Lessor exercises the option to purchase such first mortgage or other first security instrument, the closing of the purchase and sale shall occur within thirty (30) days of Lessor's written notice to Lender of its election to exercise the same at a date, time and place to be designated by Lessor in said notice.

(f) In the event Lessee desires to assign its leasehold interest under the Lease and receives a bona fide written offer acceptable to Lessee to purchase such interest, then Lessee shall give Lessor not less than thirty (30) days prior written notice of the proposed sale, which notice shall include an executed copy of the agreement with respect to the proposed sale, and Lessor shall have the first right, at its option, to purchase Lessee's leasehold interest under this Lease upon the terms provided for in such agreement; provided, however, that such option and first right shall expire thirty (30) days following the date of said notice if not exercised by Lessor by notice in writing to Lessee, but shall be reinstated and remain in force if the sale contemplated by such agreement is not consummated upon the terms (except for certain minor modifications of terms and price adjustments of less than five percent (5%)) and within the time provided for in such agreement. If the option to purchase is exercised, the sale shall be closed on or before twenty (20) days following the exercise by Lessor of its option to purchase at a time, place and date mutually acceptable to Lessor and Lessee.

(g) Notwithstanding the preceding or any other provision of this Ground Lease to the contrary, Lessor and Lessee acknowledge and agree (i) that they each have reviewed the provisions of that certain Leasehold Mortgage/Mortgage and Security Agreement (the "Leasehold Mortgage") dated \_\_\_\_\_, 199\_\_, from Lessee, as Mortgagor, and SouthTrust Bank of Alabama, National Association ("SouthTrust"), as Mortgagee, together with the other Loan Documents (as defined in the Leasehold Mortgage), (ii) that in the event of any inconsistencies between the provisions of the Leasehold Mortgage and this Ground Lease, the provisions of the Leasehold Mortgage shall govern and control, (iii) that the Leasehold Mortgage and all of its provisions, terms and conditions are hereby approved and deemed to satisfy any and all requirements of this Ground Lease with respect to any first mortgage, first mortgagee or first mortgage lender, and (iv) that, notwithstanding anything contained in this Ground Lease to the contrary, SouthTrust shall be entitled to exercise any and all rights or remedies it may have under any one or more of the Loan Documents on account of the occurrence of an Event of Default thereunder immediately and without further notice should Lessor (A) fail to timely and properly exercise its option as provided in paragraph 11(e) and/or (B) fail to timely and properly close the sale and purchase of the Leasehold Mortgage as provided in paragraph 11(e), in either which case (1) the limitations on use provided in paragraph 5, subparagraph (c), hereof shall no longer be applicable, and (2) the prohibitions against assignment, hypothecation or subletting and rights of first refusal shall no longer be applicable.



## 12.A. Insurance.

(a) (i) Lessee shall, at its sole expense, obtain and keep in force during the term hereof fire and extended coverage insurance, on all buildings and improvements that are now or hereafter placed or built upon the demised premises, and on all machinery and equipment which constitutes fixtures located therein. The amount of such insurance shall be not less than the greater of (1) the full replacement costs (exclusive of the costs of excavation, foundations and footings) of said buildings and improvements, machinery, furniture, fixtures and equipment which are a part of the building, or (2) the full insurable value of the same. Lessee further agrees that each such policy of fire and extended coverage insurance, and all other policies of insurance on the demised premises, including, without in any way limiting the generality of the foregoing, workmen's compensation, general liability and business interruption insurance which shall be obtained by Lessee, whether required by the provisions of this Lease or not, shall be made expressly subject to the provisions of this subparagraph 12(a), and shall provide that Lessee's insurers thereunder waive any right of subrogation against Lessor. All such policies shall provide that the same may not be cancelled or altered without thirty (30) days prior written notice to Lessor.

(ii) The said "full insurable value" shall be determined at the time the fire and extended coverage insurance is initially taken out, provided that Lessor or Lessee may at any time, (but not more frequently than once in every twelve (12) calendar months) by written notice to the other, require the full insurable value of said buildings and improvements to be redetermined, whereupon such redetermination shall be made promptly and each party promptly notified in writing of the results thereof.

(b) During the term of this Lease, Lessee shall procure and maintain in full force and effect a general liability policy for One Million Dollars (\$1,000,000.00) combined single limit for bodily injury and property damage, with a Three Million Dollar (\$3,000,000.00) aggregate. All of such insurance shall insure the performance by Lessee of its indemnity agreement as to liability for injury to or death of persons and injury or damage to property as provided for in subparagraph 14(b) hereof. All of such insurance shall be primary and noncontributing with any insurance which may be carried by Lessor and shall contain a provision that Lessor, named or not named as an insured, shall nevertheless be entitled to recover under said policy for any loss, injury or damage to Lessor, its agents and employees or the property of such persons by reason of the negligence of Lessee.

(c) All insurance provided for in this paragraph 12, and all renewals thereof, shall be issued by responsible insurance companies authorized to do business in the State of Alabama in the name of Lessee with Lessee's Lender and Lessor being designated therein as additional insureds. All insurance policies shall be maintained, or caused to be maintained, by Lessee with respect to the demised premises, except for public liability insurance, shall provide that each such policy shall be primary without right of contribution from any other insurance that may be

carried by Lessor or Lessee and that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured. If any insurer which has issued a policy of insurance required pursuant to this agreement becomes insolvent or the subject of any bankruptcy, receivership or similar proceeding, Lessee shall, in each instance, promptly upon request of Lessor and at Lessee's expense, obtain and deliver to Lessor a like policy issued by another insurer, which insurer and policy meet the requirements of this Ground Lease. The fire and extended coverage insurance provided for in subparagraph 12(a) above shall be payable to Lessor, Lender and Lessee as their interests may appear, and any loss adjustment shall require the joint consent of Lessor, Lender and Lessee. The bodily injury liability and property damage liability insurance provided for in subparagraph 12(b) above shall be carried in the name of Lessee with Lessor being designated therein as an additional insured. Lessor and Lender shall have the right to review all such policies as to form and substance and shall expressly provide that such policies shall not be cancelled or altered without thirty (30) days prior written notice to Lessor, in the case of the insurance provided for in subparagraph 12(b) above, and Lessor and Lender, in the case of the insurance provided for in subparagraph 12(a) above. Upon the issuance thereof, each such policy or a duplicate or certificate thereof shall be delivered to Lessor and Lender. Nothing herein shall be construed to limit the right of Lender to cause Lessee to carry or procure other insurance covering the same or other risks in addition to the insurance provided for in this paragraph 12.

(d) In the event the Lender requires other insurance or different terms for such insurance, Lessee shall obtain such insurance at its expense and Lessor shall execute such documents as may be required by such Lender consenting to the terms of Lender's mortgage encumbering the demised premises.

(e) While all insurance provided for in this paragraph 12, and all renewals thereof, shall be paid by Lessee, such costs shall be part of the Operating Rent under the Building Lease and paid by Lessor to Lessee thereunder.

**B. Destruction or Damage.**

(a) If the Premises shall be damaged or destroyed by fire or any other casualty insurable under standard fire and extended coverage insurance, and the proceeds of the insurance coverage to be maintained by Lessee in accordance with Section 12 hereof are available to Lessee in the amount of the full replacement cost of the damaged or destroyed portion of the Premises, Lessee shall promptly repair and restore the Premises to their previously undamaged condition, in which event the Lease shall continue to full force and effect; provided, however, that if repair and restoration is not possible, in accordance with reasonable estimates, within a period of one hundred eighty (180) days of work during normal working hours, or is not, in fact, completed within a like period, commencing with the date of such casualty, or if sufficient insurance proceeds are not available to Lessee as hereinabove provided, then Lessee shall have the right to terminate this Lease upon thirty (30) days notice to Lessor; and provided further, however, in the event of partial or total destruction of the Premises during the last two (2) years of the Term, Lessee and Lessor shall each have the right to terminate this Lease by written notice to the other within thirty (30) days following such destruction. The term "partial



destruction" as used in the preceding sentence shall be deemed to mean damage or destruction to an extent of at least thirty-three and one-third (33 ⅓%) of the then replacement cost of the Premises. If the Premises shall be damaged as a result of a risk not insurable under standard fire and extended coverage insurance, or if sufficient insurance proceeds are not available to Lessee as hereinabove provided, or if the building or buildings of which the Premises is a part (whether or not the Premises are damaged) shall be damaged to the extent of fifty percent (50%) or more of then replacement cost, Lessee shall, within thirty (30) days following such casualty, commence repair and restoration of the damage and prosecute the same diligently to completion in which event the Lease shall continue in full force and effect, or Lessee may within said thirty (30) day period elect not to so repair and restore, in which event the Lease shall terminate. In either of such events, Lessee shall give Lessor notice of its intention within said thirty (30) day period; provided, however, that if repair and restoration is not possible, in accordance with reasonable estimate, within a period of one hundred eighty (180) days of work during normal working hours, or is not, in fact, completed within a like period, commencing with the date of such casualty, then in either of such events Lessor shall have the right to terminate the Lease upon thirty (30) days notice to Lessee.

(b) If this Lease is not terminated as provided under this Section 12, the Rent shall be abated proportionately with the degree to which Lessee's use of the Premises or its business therein is interfered with or impaired, commencing with the date of such casualty and continuing until the premises are rendered wholly tenantable. All repairs and restoration shall be at Lessee's cost and expense except to the extent provided in the Building Lease.

(c) In the event of the termination of the Lease under this Section 12, all rent and other charges shall be payable only to the date of the happening of such casualty resulting in the termination of this Lease and any rent and other charges paid in advance shall be promptly refunded by Lessor to Lessee. In the event of such termination, Lessor shall share in the insurance proceeds paid by the insurer on the account of such casualty to the extent of the unamortized cost of any Lessor's leasehold improvements (amortized on a straight-line basis over the Term) erected and paid for by Lessor, less any contributions thereto made by Lessee.

### **13. Mechanics' and Other Liens.**

Lessee covenants and agrees to keep the demised premises and every part thereof and all buildings and other improvements thereon free and clear of and from any and all mechanics's, materialmen's and other liens for work or labor done, services performed, materials, appliances or other property contributed, used or furnished to be used in or about the demised premises for or in connection with any operation of Lessee, any alterations, improvements or repairs or additions which Lessee may make or permit or cause to be made, or any work or construction, by, for or permitted by Lessee on or about the demised premises, and at all times promptly and fully to pay and discharge any and all claims upon which any such lien may or could be based, and to save and hold Lessor and all of the demised premises and all buildings and improvements thereon free and harmless of and from any and all such liens and claims of liens and suits or other proceedings pertaining thereto.

#### **14. Indemnity.**

(a) If Lessee desires to contest any lien of the nature set forth in paragraph 13 hereof, or if Lessee desires to contest any Imposition paid by it under paragraph 3 hereof, it shall notify Lessor of its intention to do so within ten (10) days after the filing of such lien or at least ten (10) days prior to the delinquency of such Imposition, as the case may be. In either such case Lessee shall not be in default hereunder, and Lessor shall not satisfy and discharge such lien nor pay such Imposition, as the case may be, until five (5) days after the final determination of the validity thereof, within which time Lessee shall satisfy and discharge such lien or pay and discharge such Imposition to the extent held valid and all penalties, interest and costs in connection therewith, as the case may be; but the satisfaction and discharge of any such lien shall not, in any case, be delayed until execution is had upon any judgment rendered thereon, nor shall the payment of any such Imposition, together with penalties, interest and costs, in any case be delayed until sale is made or threatened to be made of the whole or any part of the demised premises on account thereof, and any such delay shall be a default of Lessee hereunder. In the event of any such contest, Lessee shall protect and indemnify Lessor against all loss, cost, including reasonable attorney's fees, expense and damage resulting therefrom and, upon demand from Lessor to do so, shall furnish Lessor a surety bond payable to Lessor in form and content satisfactory to Lessor, and issued by a corporate surety approved by Lessor, in double the amount of the lien or Imposition, as the case may be, conditioned upon the satisfaction and discharge of such lien, or the payment of such Imposition and all penalties, interest and costs in connection therewith, and shall protect and indemnify Lessor as herein required.

(b) Except for matters arising out of Lessor's acts or failure to act or compliance with the terms of the Building Lease and for matters arising in paragraph 14(d) hereafter, Lessee covenants and agrees that Lessor shall not at any time or to any extent whatsoever be liable, responsible or in anywise accountable for any loss, injury, death or damage to persons or property which at any time may be suffered or sustained by Lessee or by any other person whatsoever who may at any time be using, occupying or visiting the demised premises or be in, on or about the same, whether such loss, injury, death or damage shall be caused by or in anywise result from or arise out of any act, omission or negligence of Lessee or of any occupant, subtenant, visitor or user of any portion of the demised premises, or shall result from or be caused by any other matter or thing whether of the same kind as or of a different kind than the matters or things above set forth, and Lessee shall forever indemnify, defend, hold and save Lessor free and harmless of, from and against any and all claims, liability, loss or damage whatsoever on account of any such loss, injury, death or damage. Lessee hereby waives all claims against Lessor for damages to the buildings and improvements that are now or may hereafter be placed or built upon the demised premises and to the property of Lessee in, upon or about the demised premises, and for injuries to persons or property in or about the demised premises, from any cause arising at any time. Notwithstanding the foregoing, Lessor shall not be released from any liability that might arise under the terms of the Building Lease and no indemnification from Lessee to Lessor for such matters is herein given.

(c) Lessee agrees that it shall cause no pollutants, hazardous waste or other toxic or hazardous substance, as defined under the Resource Conservation and Recovery Act of 1976



("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendment and Reauthorization Act of 1986 ("SARA"), the Hazardous Materials Transportation Act, the Federal Water Pollution Control Act, the Clean Air Act, the Clean Water Act, the Toxic Substance Control Act, the Safe Drinking Water Act, and any other federal, state, or local statute, ordinance, or regulation relating to the protection of the environment (collectively, the "Regulations") to be discharged, released, disposed of, or allowed to escape, or stored, treated, or generated on, in or about the premises except in accordance with the provisions of the Regulations, and Lessee's operations shall be conducted in compliance with the Regulations. Copies of any notice served on Lessee by any entity, governmental body, or individual claiming any violation of any Regulations will be forwarded to Lessor within ten (10) days of receipt thereof. Lessee agrees to defend, indemnify and hold harmless Lessor from and against any claim, liability, loss or damage arising on account of any breach by Lessee of the foregoing agreement.

(d) Lessor warrants and represents that no pollutants, hazardous waste or other toxic substance, as defined in Regulations has been released on the demised premises prior to the date hereof and Lessor will defend, indemnify and hold harmless Lessee from and against any claim, liability, loss or damage resulting from a release prior to the date hereof.

#### **15. Eminent Domain.**

(a) (i) Should (A) all or (B) any portion of the demised premises be taken so that the demised premises are not capable of being rented on terms so that the net annual income is sufficient to satisfy the obligations associated with the professional office building to be built on the demised premises, including debt service, then rent shall be prorated to the effective date of such taking, Lessee shall make all payments required hereunder to be made by Lessee through the effective date of such taking, and this Lease shall thereupon terminate. All compensation awarded by the condemning authority for such taking shall be paid to Lessee's Lender (if one) and if there is no Lender, Lessor, and the Lender or Lessor, as the case may be, shall divide such award between Lessor and Lessee as follows: Lessor and Lessee shall endeavor to agree upon the fair market value of the demised premises, exclusive of the buildings and improvements thereon within thirty (30) days after such award is paid to Lessor as above provided. If Lessor and Lessee cannot agree upon such value within said thirty (30) day period, the determination of such value shall forthwith be submitted to arbitration in accordance with the procedure set forth in clause (c). After the fair market value of the demised premises, exclusive of the buildings and improvements thereon, is so determined, Lessor shall retain from such award an amount equal to such value. Lessor shall also retain from the remainder of such award (hereinafter called the "fair market value of the buildings and improvements") an amount equal to an appropriate percentage, as set forth below, of the fair market value of the buildings and improvements for each full year between the date of this Lease and the effective date of such taking, together with that portion of said percentage of the fair market value of such buildings and improvements for the

fractional year, if any, between the date of this Lease and the effective date of such taking, which the number of days in such fractional year shall bear to three hundred and sixty-five (365). The "appropriate percentage" shall be as follows: one percent (1%) for years one through ten of the Lease; one and one-half percent (1½%) for years eleven through twenty of said Lease; three percent (3%) for years twenty-one through thirty of said Lease; and four and one-half percent (4½%) for years thirty-one through forty-one of said Lease. Lender or Lessor, as the case may be, shall then pay, jointly to Lessee and any Lender the amount equal to the difference between the fair market value of the buildings and improvements and the amount, retained by Lessor, as above provided, for Lessor's share of the fair market value of the buildings and improvements, and Lessor shall have no further interest in or claim to the total award paid by the condemning authority for any taking which is the subject of this clause (i); provided, however, if the payment to Lessee and any Lender does not fully satisfy the debt thereby secured, Lessor shall pay to such Lender, Lessor's share of the fair market value of the buildings and improvements to the extent necessary to satisfy said debt.

(ii) If a portion of the demised premises is taken under the right of eminent domain, and this Lease is not terminated in accordance with clause (i) of subparagraph 15(a) above, this Lease and all of the terms and provisions hereof shall continue in full force and effect in relation to the portion not so taken, and Lessee shall, to the extent that proceeds are available to Lessee from compensation awarded by the condemning authority, make all necessary repairs and alterations to the buildings and improvements situated on that part of the demised premises not so taken, so as to constitute the portion of said buildings and improvements not so taken, a complete architectural and operating unit. If this Lease shall so continue in effect, all compensation awarded for such partial taking or takings shall be paid to Lessee's Lender or, if there is no Lender, Lessor. The Lender or Lessor, as the case may be, shall pay to Lessee, out of that portion of such awards attributable to severance damages, the amount required for the restoration or rehabilitation of the buildings and improvements on the part not so taken, as above described (which amount shall be used solely for that purpose), and (B) the Lender or Lessor, as the case may be, shall divide any such awards, less any portion thereof attributable to severance damages, between Lessor and Lessee as follows: Lessor and Lessee shall endeavor to agree upon the fair market value of each portion of the demised premises so taken, exclusive of the buildings and improvements thereon within thirty (30) days after each such award is paid to Lessor as above provided. If Lessor and Lessee cannot agree upon such value within said thirty (30) day period, the determination of such value shall forthwith be submitted to arbitration in accordance with the procedure set forth in clauses (c)(i) through (c)(viii) of this paragraph 15 hereof. After the fair market value of each such portion, exclusive of the buildings and improvements thereon, is so determined, Lessor shall retain from each such award an amount equal to such value. Lessor shall also retain from the

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remainder of each such award (hereinafter called the "fair market value of the partial buildings and improvements so taken") an amount equal to the sum of the applicable percentage (as set forth in paragraph 15(a)(i)) of the fair market value of the partial buildings and improvements so taken for each full year between the date of this Lease and the effective date of such taking, together with that portion of said applicable percentage of the fair market value of the partial buildings and improvements so taken for the fractional year, if any, between the date of the Lease and the effective date of such taking, which the number of days in such fractional year shall bear to three hundred and sixty-five (365). Lender or Lessor, as the case may be, shall then pay, jointly to Lessee and Lender, the amount equal to the difference between the fair market value of the partial buildings and improvements so taken and the amount retained as above provided, by Lessor for Lessor's share of the fair market value of the partial buildings and improvements so taken, and Lessee shall have no further interest in or claim to each such award; provided, however, that if the payment to Lessee and any Lender does not fully satisfy the debt thereby secured, Lessor shall pay to such Lender Lessor's share of the fair market value of the building and improvements to the extent necessary to satisfy such debt.

(b) A voluntary conveyance by a Lessor to a public utility, agency or authority under threat of a taking under the power of eminent domain in lieu of formal proceedings, shall be deemed a taking within the meaning of this paragraph 15. Lessor shall not make a voluntary conveyance without the prior written approval of Lessee. In any proceeding with respect to any taking within the meaning of this paragraph 15, or in any negotiation or litigation with respect to a contemplated taking, Lessor and Lessee shall have the right to participate in negotiations and to be represented by legal counsel.

(c) As used herein, "fair market value of the demised premises, exclusive of the buildings and other improvements thereon," means the highest price which the demised premises, exclusive of the buildings and other improvements thereon, will bring if exposed for sale in the open market allowing a reasonable time to find a purchaser buying with full knowledge of the highest and best use for which such land is adapted and capable of being used. The Lessor and Lessee agree that the highest and best use shall be an office building for the time the improvements comprising the Facility shall remain on the land. If Lessor and Lessee cannot agree upon the fair market value of the demised premises, exclusive of the buildings and other improvements thereon, within the thirty (30) day period provided for in subparagraph (a) of this paragraph 15, the determination of such value shall be made by a Member of the American Institute of Real Estate Appraisers ("MAI") who has been selected by the Lessor, and, if his appraisal should not be satisfactory to both parties, each party shall have the right to choose an arbitrator who is also an MAI and submit the matter to them for their decision; but in the event said arbitrators cannot agree, they are to choose a third arbitrator who is also an MAI and the decision of the majority of them shall be conclusive and binding upon both parties hereto. The expense of the original appraisal and the thirty-arbitrator shall be borne equally by the Lessee and Lessor. The expense of each party's chosen arbitrator shall be bore by each such party.

(d) Lessor and Lessee shall execute such documents as shall be required by the Lender to acknowledge the Lender's rights to the prior payment of the indebtedness owed it by Lessee.

#### **16. Lessor's Right of Inspection.**

Lessor may, at any reasonable time and from time to time during the term hereof, enter upon the demised premises for the purpose of inspecting any buildings or improvements now or hereafter placed thereon and for such other purposes as may be necessary or proper for the reasonable protection of its interest, and Lessee shall, within ten (10) days after the receipt of written notice thereof, make such repairs and replacements as Lessor may reasonably require (pursuant to the provisions of paragraph 8 hereof), and in the event of Lessee's failure or neglect to do so within the time herein specified, Lessor and its agents may enter the demised premises and perform and carry out such repairs and replacements, and Lessor, in so doing, shall not be liable for any inconvenience, disturbance, loss of business or other damage resulting therefrom.

#### **17. Conditional Limitations and Default Provisions.**

(a) If any of the following events (herein referred to as "events of default") shall occur, namely, if any default shall be made by Lessee in the payment punctually when due of any rent or other monies due hereunder and shall continue for a period of fifteen (15) days after written notice from Lessor to Lessee of said default; or if default shall be made by Lessee in the performance of any of the other terms, covenant or conditions herein contained to be performed by Lessee and such default shall continue for a period of thirty (30) days after written notice thereof by Lessor to Lessee; or, in the case of a default which cannot be cured by the payment of money and cannot be cured within such a thirty (30) day period, shall continue for an unreasonable period; or if Lessee shall abandon the demised premises; or if Lessee, without Lessor's written consent, shall voluntarily or involuntarily, or by operation of law, transfer, or attempt to transfer, its interest in any buildings or improvements now or at any time hereafter constructed, erected or situated on the demised premises; or if Lessee shall admit in writing its inability to pay its debts generally as they become due, file a petition in bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation under any law or statute of the federal government or any state government or any subdivision of either now or hereafter in effect, make an assignment for the benefit of its creditors, consent to or acquiesce in the appointment of a receiver of itself or of the whole or any substantial part of the demised premises; or if an order, judgement or decree shall be entered by any court of competent jurisdiction appointing, without the consent of Lessee, a receiver of Lessee or of the whole or any substantial part of the demised premises, and such order, judgment or decree shall not be vacated or set aside or stayed within sixty (60) days from the date of such appointment; or if a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Lessee under any bankruptcy, insolvency, reorganization readjustment of debt, dissolution or liquidation law or statute of the federal government or any state or territorial government or any subdivision of either now or hereafter in effect, and such order, judgment or decree shall not be vacated, set aside or stayed within sixty (60) days from the date of entry of such order, judgment or decree, or a stay of such proceedings, or if under the provisions of

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other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of Lessee or of the whole or any substantial part of the demised premises, and such custody or control shall not be terminated within sixty (60) days from the date of assumption of such custody or control, then and in any of such events of default, Lessor shall have the option either:

(i) to collect, by suit or otherwise, each installment of rent or other sum as it becomes due hereunder, or to enforce by suit or otherwise, any other term or provision hereof on the part of Lessee required to be kept or performed;

(ii) to re-enter and take possession of the demised premises at any time after written notice to that effect to Lessee, and Lessee shall immediately vacate the demised premises and deliver possession thereof to Lessor, but nevertheless, Lessee shall, to the extent permitted by law, remain liable for the unpaid rent and all other sums payable by Lessee hereunder, as such rent or other sums shall or would have become due; but there shall be credited against such unpaid rent, the net proceeds realizable from the leasing of the premises to a third party, after first deducting from such proceeds all costs and expenses incurred in connection with such leasing, attorney's fees, brokerage and expenses of keeping the demised premises in good order or preparing the same for leasing; or

(iii) to terminate this Lease, in which event Lessee agrees immediately to surrender possession of the demised premises, and, to the extent permitted by law, to pay to Lessor the amount of damage sustained by Lessors by reason of Lessee's breach of this Lease.

(b) (i) Anything in subparagraph 17(a) above to the contrary notwithstanding, Lessor agrees that so long as the leasehold estate hereunder is hypothecated to the Lender pursuant to subparagraph 11(b) hereof, Lessor will not modify or amend this Lease in any material manner nor agree with Lessee to any cancellation, rescission or surrender of this Lease without the prior written consent of such known Lender. Lessor agrees that it will not terminate this Lease because of any default or breach hereunder on the part of Lessee without prior written notice to the Lender of Lessor's intention to terminate this Lease, specifying the default of Lessee, and Lessor will take no action to terminate this Lease if said Lender, within sixty (60) days after service of such written notice shall:

(A) cure such default or breach, if the same can be cured by the payment or expenditure of money provided to be paid under the terms of this Lease, or if such default or breach is not so curable, to cure such default or breach by commencing and thereafter diligently pursuing to completion foreclosure or other appropriate proceedings in the nature thereof; and

(B) keep and perform all the covenants and conditions of this Lease requiring the payment or expenditure of money by Lessee until such time as said leasehold shall be sold upon foreclosure or other appropriate proceedings in the

nature thereof, or shall be released or reconveyed thereunder; provided, however, that if such Lender shall fail or refuse to comply with any and all of the conditions of this subparagraph 17(b), then and thereupon Lessor shall be relieved from the covenant or forbearance herein contained.

(ii) Any notice provided for in this subparagraph 17(b) may be given concurrently with or after Lessor's notice of default to Lessee as provided for in subparagraph 17(a) above.

#### **18. Waiver by Lessor.**

If any action or proceeding hereunder is instituted or if other steps are taken by Lessor or Lessee, and a compromise, part payment or settlement thereof shall be made, either before or after judgment, the same shall not constitute or operate as a waiver by Lessor or Lessee, respectively, of any right, covenant or provision of or under this Lease or of any subsequent breach or breaches thereof nor of the Lease itself. No waiver of any default under or breach or violation of any provision or covenant of this Lease shall constitute or operate as a waiver of such provision or covenant or of any subsequent default thereunder or breach or violation thereof, and no delay, failure or omission in exercising or enforcing any right, privilege, or option under this Lease shall constitute a waiver, abandonment or relinquishment thereof or prohibit or prevent any election under or enforcement or exercise of any provision, right, privilege, or option herein contained or granted. No waiver of any provision hereof by Lessor or Lessee shall be deemed to have been made unless and until such waiver shall have been reduced to writing and signed by Lessor or Lessee, respectively. The receipt by Lessor of rent with knowledge of any breach or violation of or default under this Lease shall not constitute or operate as a waiver of such breach, violation or default. Payment by Lessee or receipt by Lessor of a lesser amount than the stipulated rent or other sums due Lessor shall operate only as a payment on account of said rent or other sums; no endorsement or statement on any check or other remittance or in any communication accompanying or relating to such payment shall operate as a compromise or accord and satisfaction unless the same is approved in writing by Lessor; and Lessor may accept such check, remittance or payment without prejudice to its right to recover the balance of said rent or other sums due by Lessee and pursue any other remedy allowable by law or under this Lease.

#### **19. Nonmerger of Estates.**

If Lessor shall become the holder of a mortgage or other security instrument on the leasehold estate created hereby, the fee simple title to the demised premises and said leasehold estate shall not merge but shall always be kept separate and distinct unless Lessor shall elect to merge title to such estates as evidenced by written instrument executed by Lessor and filed in the Probate Office of Shelby County, Alabama.



## **20. Covenants Run with Land.**

(a) All covenants, agreements and conditions contained in this Lease are and shall be deemed to be covenants running with the land and the reversion and shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties hereto and also the heirs, personal representatives, successors and assigns of all subsequent Lessors and Lessees respectively hereunder.

(b) All references in this Lease to "Lessee" or "Lessor" shall be deemed to refer to and include the successors and assigns of Lessee or Lessor, respectively, without specific mention of such successors or assigns.

## **21. Notices and Limitation of Lessor's Liability.**

(a) Except as otherwise provided hereunder, any notice or communication from one party to the other may be delivered by hand or mailed by certified United States mail, return receipt requested, postage prepaid. Notices or communications shall be addressed to Lessor at Shelby Baptist Medical Center, P.O. Box 488, Alabaster, Alabama 35007 (Attn: Finance Department), or such other address as Lessor from time to time may designate by notice in writing to Lessee. Notices or communications shall be addressed to Lessee at c/o Johnson Development, L.L.C., 1900 International Park Drive, Suite 100, Birmingham, Alabama 35243, or such other address as Lessee shall from time to time designate by notice in writing to Lessor, or when no address is known to, or has been received by, Lessor or its designated agent, then a copy of the notice or communication shall be posted on the front of the demised premises or on the front of any buildings then situated thereon. All notices to Lender by Lessor shall be addressed to Lender and sent by United States certified mail, return receipt requested, postage prepaid, to such address as Lender may from time to time designate in a written notice to Lessor. Any notice mailed in the manner above set forth shall be deemed to have been given when delivered to the United States post office.

(b) If Lessor conveys its right, title and interest in and to the demised premises and this Lease, it shall notify Lessee promptly after recordation of the deed of such transfer of the name and address of the grantee. Any such conveyance shall be made expressly subject to the terms of this Lease.

(c) The term "Lessor," as used in this Lease, so far as any covenants or obligations on the part of Lessor are concerned, shall be limited to mean and include only the owner or owners at the time in questions of the fee of the demised premises, and in the event of any transfer or transfers of the title to such fee the Lessor herein named (and in case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved from and after the date of such transfer or conveyance of all personal liability as respects the performance of any covenants or obligations on the part of Lessor contained in this Lease thereafter to be performed, provided that any funds in the hands of Lessor or the then grantor at the time of such transfer, in which Lessee has an interest, shall be turned over to the grantee and any amount then due and payable to Lessee by Lessor or the then grantor under any

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provision of this Lease shall be paid to Lessee; and provided, further, that upon any such transfer, the grantee or transferee shall expressly assume, subject to the limitations of this paragraph 21, all of the terms, covenants and conditions in this Lease contained to be performed on the part of Lessor, it being intended hereby that the covenants and obligations contained in this Lease on the part of the Lessor shall, subject as aforesaid, be binding on each Lessor, its successors and assigns, only during and in respect of its respective period of ownership.

## **22. Estoppel Certificates.**

Lessee or Lessor, as the case may be, will execute, acknowledge and deliver to the other, promptly upon request, its certificate certifying (i) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications), (ii) the dates, if any, to which the Basic Rent and Additional Rent have been paid, (iii) whether there are then existing offsets or defenses against the enforcement of any term hereof on the part of Lessee to be performed or complied with (and, if so, specifying the same), and (iv) that no notice has been given to Lessee of any default which has not been cured: subject, however, to such exception that may exist at such time. Any such certificate may be relied upon by any prospective purchaser, sublessee or Lender with respect to the leasehold estate hereunder or the demised premises or any part thereof.

## **23. General Provisions.**

(a) In case any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Lease, but this Lease shall be constructed as if such invalid, illegal or unenforceable provisions had not been contained herein. The specified remedies to which the Lessor may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies of redress to which Lessor may be lawfully entitled in case of any breach or threatened breach by Lessee of any provisions of this Lease.

(b) Whenever in this Lease the consent or approval of either Lessor or Lessee is required or permitted, the party requested to give such consent or approval will act promptly and will not unreasonably withhold its consent or approval except as provided in paragraphs 5 and 11 above.

(c) In the event either Lessor or Lessee shall bring any action or proceedings for damages for an alleged breach of any provision of this Lease, to recover rents, or to enforce, protect or establish any right or remedy of either party, the prevailing party shall be entitled to recover as a part of such action or proceedings reasonable attorney's fees and court costs.

(d) "Lessor" shall be deemed and taken to mean each and every person or party mentioned as a Lessor herein, be the same one or more; and if there be more than one Lessor, any notice required or permitted by the terms of this Lease may be given by or to any one thereof, and shall have the same force and effect as if given by or to all thereof.

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(e) The word "Lessee" shall be deemed and taken to mean each and every person or party mentioned as Lessee herein, be the same one or more; and if there shall be more than one Lessee, any notice required or permitted by the terms of this Lease may be given by or to any one thereof and shall have the same force and effect as if given by or to all thereof. The use of the neuter singular pronoun to refer to Lessor or Lessee shall be deemed a proper reference even though Lessor or Lessee may be an individual, a partnership, a corporation, a trust or other entity, or a group of two or more of them. The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where there is more than one Lessor or Lessee and to either corporations, associations, partnerships, tenants or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.

(f) The submission of this Lease for examination does not constitute a reservation of or option for the demised premises and this Lease becomes effective as a lease only upon execution and delivery thereof by Lessor and Lessee.

(g) The expense of recording this Lease shall be borne by Lessee. Lessee may have prepared a "short form" of this Lease for the purposes of recordation and Lessor does hereby covenant and agree to join in the execution of such a memorandum.

(h) Lessee's obligations hereunder are absolute and shall not be affected or in any way diminished because of the failure of Lessor, Lessee or any other person to obtain any certificate of need or other similar governmental approval for the use of the Premises. Without limiting the generality of the foregoing, Lessee shall continue to perform its obligations under this Lease notwithstanding the violation (or alleged violation) of any such law, rule or regulation.

#### **24. Holding Over.**

This Lease shall terminate and become null and void without further notice upon the expiration of the term specified, and any holding over by Lessee after the expiration of said term shall not constitute a renewal hereof or give Lessee any rights hereunder or in or to the demised premises, except as otherwise herein provided, it being understood and agreed that this Lease cannot be renewed, extended or in any manner modified except in writing signed by both parties hereto.

#### **25. Subordination of Any Fee Mortgage.**

Notwithstanding anything contained herein to the contrary, the lien of any mortgage, deed of trust or other indenture hereafter placed upon the fee title to the demised premises, the Facility, or any other interest of Lessor in and to the real property described on Exhibit A and all buildings and improvements now or hereafter located on the demised premises (collectively, a "Fee Mortgage") shall be subject and subordinate to the Lease and any amendments or modifications hereto, and the holder of any Fee Mortgage shall have no right to disturb the Lessee's possession of the demised premises or to deprive the Tenant of any other right created for the benefit of Tenant under this Lease.

## **26. Transfer of Interest in Lessee.**

Lessee will not permit the transfer of any interest in it (financial rights and/or governance rights) to anyone without the prior written consent of Lessor other than a transfer to a member of the family of James Milton Johnson or an entity, the beneficial owners of which are members of the family of James Milton Johnson. A member of the family of James Milton Johnson shall include his estate, his spouse, any ancestor or any descendant or any trust for the benefit of such person. As for a proposed transfer to a person not a member of the family of James Milton Johnson, Lessor will not unreasonably withhold its consent. If Lessor reasonably believes that a proposed transfer would be to a person who is a "disqualified person," within the meaning of Section 4958(f)(1) of the Internal Revenue Code of 1986, as amended, Lessor's refusal to consent to the transfer will not be deemed unreasonable.



IN WITNESS WHEREOF, Lessor and Lessee have executed this instrument by proper officers thereunto duly authorized as of the day and year first hereinabove written.

LESSOR:

Baptist Health System, Inc.

ATTEST:

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By: Meghan D. White  
Its: Vice President

LESSEE:

SMCMOB II, L.L.C.  
an Alabama Limited Liability Company

ATTEST:

---

By: [Signature]  
A Member

STATE OF ALABAMA )  
Jefferson COUNTY )

I, the undersigned authority, a Notary Public in and for said County and 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 the 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 29<sup>th</sup> day of April, 1998.

Martha S. Mims

Notary Public

MY COMMISSION EXPIRES MARCH 30, 2002

STATE OF ALABAMA )  
Jefferson COUNTY )

I, the undersigned authority, a Notary Public in and for said County and State, hereby certify that **JAMES MILTON JOHNSON**, whose name as Member of SMCMOB II, L.L.C., an Alabama limited liability company, 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 the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

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

Elizabeth P. Conner

Notary Public



## INDEX

**Ground Lease Between**  
**BAPTIST HEALTH SYSTEM, INC.,**  
**an Alabama nonprofit corporation, as Lessor, and**  
**SMCMOB II, L.L.C.**  
**an Alabama limited liability company,**  
**as Lessee**

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**EXHIBIT "A"**

**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.



## **EXHIBIT B**

The \$500,000 capital expenditure limitation (the "Capital Expenditure Limitation") shall be increased on the first day of the second Lease Year and on the first day of each succeeding Lease Year of the Term in proportion to the increase in the Index (as defined below) which has occurred between the month prior to the first day of the Initial Term (the "Base CPI Month") and the same month of the year in which the adjustment is being made (the "Comparison CPI Month"). Lessor shall notify Lessee of each increase by delivering a written statement setting forth the Index for the Base CPI Month, the Index for the applicable Comparison CPI Month, the percentage increase between those two Indices, and the new Capital Expenditure Limitation. The Capital Expenditure Limitation shall not be reduced from the last previous adjusted Capital Expenditure Limitation by reason of any decrease in the Index. If Lessor's notice is given after the effective date of an increase, Lessee shall nevertheless be allowed to make capital expenditures based upon the new Capital Expenditure Limitation from its effective date until the next annual increase. Because of delays in publishing the Index, the parties contemplate that there will be a delay of several months each year in calculating the percentage increase and giving notice thereof. The term "Index" means the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for all Urban Consumers (all items for the South urban region on the basis of 1982-84 = 100). If the format or components of the Index are materially changed after the execution of this Lease, Lessor and Lessee shall agree on a substitute index to be used to calculate the increases in the Capital Expenditure Limitation which is published by the Bureau of Labor Statistics or similar agency and which is reasonably equivalent to the Index in effect on the date of this Lease.

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10:51 AM CERTIFIED  
B-1 SHELBY COUNTY JUDGE OF PROBATE

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