

\STATE OF ALABAMA)
COUNTY OF SHELBY)

**ACCESS, INGRESS, EGRESS, PARKING AND UTILITIES
EASEMENTS AND RESTRICTIONS AGREEMENT**

Dated as of March 29, 2002

SHELBY MOB III, LLC, an Alabama limited liability company ("LLC"), and **BAPTIST HEALTH SYSTEM, INC.**, an Alabama not-for-profit corporation, d/b/a Shelby Baptist Medical Center (the "Hospital"), agree as follows:

1. **Preliminary Statements.** The Hospital is the fee owner of certain property located in Shelby County, Alabama, as more particularly described on Exhibit "A" attached hereto (the "Hospital Campus"). LLC is the tenant under that certain Ground Lease dated as of even date herewith (the "Ground Lease"), pursuant to which LLC leases from the Hospital that certain parcel of land located in Shelby County, Alabama (the "MOB Tract"), as more particularly described on Exhibit "B", which will be developed, constructed and operated as a medical office building (the "MOB"). The Hospital and LLC intend to use and operate the Hospital Campus and the MOB Tract in conjunction with each other and, in order to effectuate the common use and operation thereof, the parties desire to enter into certain covenants and agreements and to grant certain easements in, to, over and across the Hospital Campus and the MOB Tract. Additionally, the Hospital has agreed to make available all paved parking spaces located on the Hospital Campus within 400 feet of the MOB Tract (the "Parking Areas"). The non-exclusive use and benefit of the Parking Areas is necessary for the use and enjoyment of the MOB Tract. It is also necessary for the use and enjoyment of the Hospital Campus and the MOB Tract that there be access, ingress, and egress between, from and to the Hospital Campus, the MOB Tract, the Parking Areas and the public streets, roads and highways abutting the Hospital Campus over the common curb cuts, roadways, driveways, and sidewalks (collectively, the "Access Areas"), such Access Areas being more particularly described on Exhibit "C" attached hereto. It is also necessary for the use and enjoyment of the Hospital Campus and the MOB Tract that there be access, ingress, and egress by means of an enclosed walkway between, from and to the various buildings located on the Hospital Campus and the MOB Tract, over the walkway area (the "Walkway Area") more particularly described on Exhibit "D" attached hereto. It is also necessary for the use and enjoyment of the Hospital Campus and the MOB Tract that there be utilities and storm water drainage, including electricity, gas, water, sanitary sewer, storm or surface water drainage, telephone and cable (the "Utilities and Drainage Areas" and, together with the Parking Areas, the Access Areas and the Walkway Area, the "Easement Areas"), such Utilities Areas being more particularly shown on the drawing which is attached hereto as Exhibit "E". The Hospital and LLC desire to set forth their respective rights and obligations with respect to the Easement Areas in this Access, Ingress, Egress, Parking and Utilities Easements and Restrictions Agreement (this "Agreement"). The LLC and/or any other ground lessee from time to time of the MOB Tract is hereinafter referred to, collectively, as the "MOB Tract Owner." The Hospital and any other owner from time to time of the Hospital Campus is hereinafter referred, collectively, to as the "Hospital Campus Owner."

2. Grant of Parking Easements.

(a) The Hospital Campus Owner hereby establishes for the benefit of, and GRANTS AND CONVEYS to MOB Tract Owner, its successors and assigns, tenants, and unto all licensees, invitees and business guests of MOB Tract Owner, a non-exclusive and continuous easement appurtenant to the MOB Tract (the "Parking Easement") in, over, across, along and through the Parking Areas, for the purpose of vehicular parking in, on, across and over the Parking Areas in common with the Hospital Campus Owner and the employees, licensees, invitees and business guests of the Hospital Campus Owner, as such Parking Areas may be reduced, increased, relocated or reconfigured pursuant to the terms of this Agreement..

(b) Hospital Campus Owner shall not make any Parking Change (as defined below) that reduces the number of paved parking spaces within the Parking Areas below the Minimum Parking Requirements (as defined below) without obtaining the prior written consent of the MOB Tract Owner, which consent shall not be unreasonably withheld, conditioned or delayed.

(c) Hospital Campus Owner may make any Parking Change that does not reduce the number of paved parking spaces within the Parking Areas below the Minimum Parking Requirements (as defined below) without the prior written consent of the MOB Tract Owner; provided that Hospital Campus Owner shall provide MOB Tract Owner with written notice, together with detailed plans and specifications of any such Parking Change, at least 30 days before the commencement of any such Parking Change.

(d) As used herein, the term "Minimum Parking Requirements" shall mean that Hospital Campus Owner shall (i) maintain at all times a minimum of 313 paved parking spaces within the Parking Areas, (ii) maintain at all times a minimum number of paved parking spaces on the Hospital Campus to adequately and sufficiently serve the buildings and other improvements constructed or to be constructed thereon from time to time, and (iii) maintain at all times a minimum number of paved parking spaces on the Hospital Campus as required pursuant to any law, rule, ordinance, regulation or variance. As used herein, the term "Parking Change" means, individually or in the aggregate, any reduction, alteration, relocation or reconfiguration of the paved parking areas located within the Parking Areas.

3. Grant of Access, Ingress and Egress Easements. The Hospital Campus Owner hereby establishes for the benefit of, and GRANTS and CONVEYS unto MOB Tract Owner, its successors and assigns, and unto all tenants, licensees, invitees, and business guests of MOB Tract Owner, a non-exclusive and continuous easement appurtenant to the MOB Tract (the "Access Easement") in, over, across, along and through the common curb cuts, roadways, driveways, walkways and sidewalks in the Access Areas now existing or hereafter constructed on the Hospital Campus, for the purpose of vehicular and pedestrian ingress to, egress from, and access between the MOB Tract, the Parking Areas, the Hospital Campus and the public streets, roads and highways abutting the Hospital Campus. The Hospital Campus Owner shall have the right to cause non-material alterations, relocations or reconfigurations of any portion of the Access Areas without the

prior written consent of the MOB Tract Owner. No material alterations, relocations or reconfigurations of any of the Access Areas shall be made by Hospital Campus Owner without obtaining the prior written consent of the MOB Tract Owner, which consent shall not be unreasonably withheld, conditioned or delayed.

4. **Grant of Utilities Easements.** The Hospital Campus Owner hereby establishes for the benefit of, and GRANTS and CONVEYS unto MOB Tract Owner, its successors and assigns, and unto all tenants, licensees, invitees and business guests of the MOB Tract Owner, a non-exclusive and continuous easement appurtenant to the MOB Tract (the "Utilities Easement") on, over, across, along and through the Utilities Areas, for the purpose of tapping, installation, extension, repair, maintenance and replacement of all transmission, distribution and other lines, poles, mains, wires, pipes and all other appliances necessary for utilities ("Utility Facilities"), including electricity, gas, water, sanitary sewer, telephone, and cable television, to the MOB Tract.

5. **Grant of Easements for Walkway.**

(a) Grant to the Hospital Campus Owner. The MOB Tract Owner hereby establishes for the benefit of, and GRANTS and CONVEYS unto Hospital Campus Owner, its successors and assigns, and unto all tenants, licensees, invitees, and business guests of Hospital Campus Owner, a non-exclusive and continuous easement appurtenant to the Hospital Campus (the "Hospital Walkway Easement") through the outer wall of the MOB at the entrance of the Walkway Area for the purpose of pedestrian ingress to, egress from, and access between the MOB and the hospital buildings, the parking areas and other facilities located on the Hospital Campus abutting the MOB Tract, subject to the rules and regulations and hours of operation adopted pursuant to the provisions of 5(f) hereof.

(b) Grant to the MOB Tract Owner. The Hospital Campus Owner hereby establishes for the benefit of, and GRANTS and CONVEYS unto MOB Tract Owner, its successors and assigns, and unto all tenants, licensees, invitees, and business guests of MOB Tract Owner, a non-exclusive and continuous easement appurtenant to the MOB Tract (the "MOB Walkway Easement" and, together with the Hospital Walkway Easement, the "Walkway Easements") in, over, across and through the Walkway Area for the purpose of pedestrian ingress to, egress from, and access between the MOB and the hospital buildings, the parking areas and other facilities located on the Hospital Campus abutting the MOB Tract, subject to the rules and regulations and hours of operation adopted pursuant to the provisions of 5(e) hereof.

(c) Construction of Enclosed Walkway. Within __ days after the date hereof, Hospital Campus Owner shall construct and maintain an enclosed walkway over the Walkway Easements pursuant to plans and specifications approved in advance by the MOB Tract Owner, which approval shall not be unreasonably withheld, conditioned or delayed.

(d) Control of Access. The Hospital Campus Owner and the MOB Tract Owner shall each control access, ingress and egress to and between the Hospital Campus and the MOB Tract, respectively, and the closing of entrances of the Walkway Areas to and from the MOB and the

hospital buildings, the parking areas and other facilities located on the Hospital Campus abutting the MOB Tract; provided that the parties intend to provide free, continuous, and uninterrupted pedestrian use of the Walkway Easements twenty-four hours a day, seven days a week, subject only to such security arrangements and controlled access to the hospital buildings located on the Hospital Campus and the MOB (by card or other mutually agreeable means), as may be more specifically specified in the rules to be promulgated pursuant to Section 5(f) hereof. Notwithstanding the foregoing provisions, use of the Walkway Easements shall be subject to interruptions caused by temporary periods of repair, reconstruction, or alteration, or by Acts of God, strikes, lockouts, unavailability of materials, failure of power, prohibitive governmental laws or regulations, riots, insurrections, the act or failure to act of the other party, adverse weather conditions preventing the performance of work, war or other reason beyond the parties' control.

(e) Walkway Easements Not to be Altered or Relocated. Nothing contained herein or otherwise shall be construed to give either party the right to alter or relocate any of the Walkway Easements.

(f) Rules and Regulations. The Hospital Campus Owner and the MOB Tract Owner shall abide by the reasonable rules and regulations, including hours of operation, to be agreed upon by the Hospital Campus Owner and the MOB Tract Owner pertaining to the safety, cleanliness, security, access, hours of usage and traffic control within the Walkway Easements. Any modifications to the rules and regulations pertaining to the Walkway must be agreed to in writing in advance by Hospital Campus Owner and the MOB Tract Owner.

6. **Other Grants by Hospital Campus Owner.** Subject to the requirements of any applicable governmental authority, the Hospital Campus Owner shall have the right to grant similar easements, leases and licenses to others for the use of the Easement Areas located on the Hospital Campus as shall be determined in the sole discretion of the Hospital Campus Owner to be necessary, appropriate or desirable in connection with the use, operation and enjoyment of the buildings and improvements now or hereafter located on the Hospital Campus or any part thereof or in the vicinity or any adjoining of the Hospital Campus; provided that the granting of such easements, leases or licenses shall not unreasonably impair MOB Tract Owner's rights regarding the use of the Easement Areas.

7. **Scope and Purposes of Easements; Relocation.**

(a) Purpose of Easements. The Easements granted hereinabove are for the respective uses of MOB Tract Owner, its successors, assigns, tenants, licensees, invitees and business guests, for the parking, passage and accommodation of vehicles and pedestrians, consistent with good traffic control, in connection with the use, maintenance and operation of the MOB Tract.

(b) No Obstructions to Easements. The Hospital Campus Owner shall not construct or maintain any gates, fences, walls, curbs or other obstructions which materially impair or prevent the full and intended use of Easements; provided that the foregoing provision shall not prohibit

barricades erected and reasonably necessary in connection with the temporary construction or repair and maintenance of any buildings or other improvements or facilities (including utility installations, paving, curbing or landscaping) or the erection or construction of limited barricades, gates, fences, curbing or other reasonable forms of vehicular or pedestrian traffic controls on the Hospital Campus.

(c) Relocation of Utilities. The Hospital Campus Owner reserves and shall have the right to relocate, from time to time, any utilities located in the Utility Areas; provided that such relocation:

(i) shall not unreasonably interfere with or diminish the utility services to the MOB Tract; and

(ii) shall not unreasonably reduce or unreasonably impair the usefulness or function of such utility (except briefly during non-business hours as reasonably necessary to switch from existing utility facilities to relocated utility facilities).

(d) Execution of Amendments. MOB Tract Owner agrees to execute amendments to this Agreement in recordable form pursuant to any changes made pursuant to Sections 6(c) or 6(d).

8. Maintenance.

(a) General. So long as the Ground Lease remains in effect, the Hospital Campus Owner shall maintain the Access and non-exclusive Parking Areas in good condition and repair, and if required by law, in accordance with the standards necessary to comply with all applicable laws, codes and ordinances. The costs of such maintenance shall be borne by the Hospital Campus Owner.

(b) Maintenance of Walkway. The Hospital campus Owner shall maintain, repair, and keep (or cause to be maintained, repaired, and kept), the Walkway in good condition, including the lighting, heating, ventilation, and air conditioning systems of the Walkway. During normal hours of operation, the Hospital shall cause the Walkway to be reasonably lighted and comfortably air-conditioned or heated and the Walkway shall be maintained by the Hospital so as to conform in all respects to the laws and ordinances regulating the maintenance thereof.

9. Construction.

(a) Cooperation with Planning. The Hospital Campus Owner and MOB Tract Owner shall cooperate with each other in planning and approving any common utility facilities and any other improvements to serve the Hospital Campus and the MOB Tract such as public utilities (either operated or regulated by government), street and road improvements, water drainage, and similar improvements to be made within any of the Easement Areas. As a precondition to the exercise of any right granted to MOB Tract Owner by this Agreement to do any construction: (i) the plans and specifications for such construction; (ii) the contractors to perform said work; and (iii) the specific location of the facilities to be constructed shall all be subject to the prior written approval of the Hospital Campus Owner, which approval shall not unreasonably be withheld, except where such

proposed location or work shall materially interfere with any existing buildings or other improvements or the proposed location of future buildings and the use and enjoyment of such existing or future buildings or improvements on or to the Hospital Campus. The specific location of each and every facility constructed pursuant to this Agreement shall be selected so as to avoid any damage to or interference with any buildings or improvements that may be located now or hereafter on the Hospital Campus.

(b) Completion of Construction; Payment of Charges. With respect to any construction by MOB Tract Owner by virtue of this Agreement, MOB Tract Owner shall: (i) cause all said construction to continue promptly and in a good and workmanlike manner in compliance with applicable laws and regulations, uninterrupted, except for normal interruptions of weather, strikes, material shortages, etc., until it shall have been completed in accordance with the approved plans and specifications and in such a manner and at such times as will cause a minimum of disruption to the operation of the health care facilities, offices or businesses located on the Hospital Campus; (ii) in the event that the surface of the ground or any improvements are disturbed or damaged in the course of installation, maintenance, construction or repair of any Easement Areas by MOB Tract Owner, or its agents or contractors, then MOB Tract Owner shall, at its sole cost and expense, promptly restore any disturbed area and repair all damage to the improvements to the condition existing prior to such disturbance or damage; (iii) maintain and repair in good condition said facilities so long as they shall exist; and (v) pay promptly when due all costs incurred in connection with such construction and other actions described in this Section. In the event any mechanics' liens are filed against any portion of the Hospital Campus as a result of services performed or materials furnished by or at the instance of MOB Tract Owner, MOB Tract Owner hereby covenants to cause such lien to be immediately released and discharged of record, either by paying the indebtedness which gave rise to such lien, or by posting such bond or other security as shall be required by law to obtain such release and discharge, and further agrees to indemnify, defend, and hold harmless the Hospital Campus Owner against all liability, loss, damage, costs or expenses, including attorneys' fees, on account of such claim or lien.

(c) Location and Maintenance of Utility Easements. After the specific location of each facility to be constructed pursuant to the Utility Easements granted herein shall have been determined, the location of the easement relating to said facility shall be limited to an area extending 25 feet on either side of the centerline of said facility as a temporary construction easement. At such time as construction of said facility shall have been completed, the easement area relating to said facility shall be limited to an area consisting of five feet on either side of the centerline of said facility. The MOB Tract Owner shall, at its sole cost and expense, maintain all Utility Facilities installed on the Hospital Campus by the MOB Tract Owner or which primarily provide service to the MOB Tract in good condition and repair and shall make all repairs, replacements and renewals necessary to maintain such condition. The Hospital Campus Owner shall maintain all Utility Facilities located on the Hospital Campus (i) which were not installed on the Hospital Campus or the MOB Tract by the MOB Tract Owner at the time of and in conjunction with the construction of the MOB, or (ii) which do not primarily provide service to the MOB Tract in good condition and repair, and shall make all repairs, replacements and renewals necessary to maintain such condition.

The Hospital Campus Owner shall pay all costs associated with the consumption of utility services which relate solely to the improvements located on the Hospital Campus. The MOB Tract Owner shall pay all costs associated with the consumption of utility services which relate solely to improvements located on the MOB Tract.

(d) Indemnification. The MOB Tract Owner shall indemnify and save the Hospital Campus Owner harmless from and against any and all loss, costs, damages, expenses, liabilities, demands and causes of action and any expenses incidental to the defense thereof incurred by the Hospital Campus Owner, arising as a result of the exercise by the MOB Tract Owner of any rights granted herein; provided that the MOB Tract Owner shall not so indemnify and save harmless the Hospital Campus Owner from the consequences of any negligent acts of the Hospital Campus Owner.

10. Condemnation: Casualty Loss.

(a) Total Condemnation. In the event the whole of the Hospital Campus is taken for any public or quasi public use under any governmental law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof, the MOB Tract Owner will not share in any award, compensation or other payment made by reason of such taking, and such award, compensation or other payment will belong entirely to the Hospital Campus Owner, and such Hospital Campus Owner will have no further liability to the MOB Tract Owner for the loss of the Easements. Notwithstanding the foregoing, nothing contained herein shall exclude or limit any right of recovery the MOB Tract Owner may have for the taking of any property as provided by any ground lease of the MOB Tract.

(b) Partial Condemnation. In the event that any portion of the Hospital Campus containing all or any portion of the Easement Areas is taken for any public or quasi public use under any governmental law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof, the MOB Tract Owner will not share in any award, compensation or other payment made by reason of such taking so long as the Hospital Campus Owner, at no expense to the MOB Tract Owner, elects to provide substitute areas for the Easement Areas so taken and relocates any improvements within the Easement Areas so taken, such as utility lines, for example. However, in the event Hospital Campus Owner for any reason fails to provide such substitute areas for the Easement Areas so taken, then, if the use, operation or value of the MOB is adversely affected by such partial taking or conveyance or by termination of an Easement, then, MOB Tract Owner shall be entitled to such portion of the award or other compensation payable with respect to any such taking or conveyance as such portion of the award or compensation shall be determined by mutual agreement between the Hospital Campus Owner and the MOB Tract Owner, or if they are unable to agree, such portion of the award or compensation, as is determined by the final non-appealable order of a state court having jurisdiction over cases relating to condemnation of real property.

(c) Casualty. In the event of the destruction of, or damage to the MOB or other improvements upon the MOB Tract, or any part thereof, at any time during the term of this Agreement, by fire, windstorm or other casualty, the terms of the Ground Lease shall control.

11. Breach; Remedies; Self Help.

(a) Self Help. In the event the owner of either tract fails to perform any provision of this Agreement, the non-breaching owner shall have the right, without being obligated to do so, to enter upon the relevant Easement Area and perform the obligations of the breaching owner hereunder; provided, however, that written notice of such intention, specifying the nature of the alleged default and the actions to be performed, has been given to the breaching owner not less than ten days prior to the commencement of such action or not less than 24 hours prior to such commencement if, in the reasonable judgment of the non-breaching owner, such default is of an emergency nature. During such ten-day or twenty-four hour period, as the case may be, the breaching owner will have the right to perform or commence performance of action appropriate to remedy such default, and provided such action is diligently carried to completion, the right of the non-breaching owner to perform the obligation of the breaching owner will terminate. If the non-breaching owner elects to perform the action to have been performed by the breaching owner, on completion of such action or from time to time, if the action is of a continuing nature, an itemized statement of the cost thereof will be submitted to the breaching owner and the amount thereof will be immediately due and payable by the breaching owner, which amount will bear interest at the rate of ten percent per annum until paid.

(b) Injunctive and Other Remedies. In the event of a breach by any party of any of the provisions, covenants, conditions and restrictions of this Agreement, the other party shall be entitled to obtain an injunction specifically enforcing the performance of such obligation; the parties hereto hereby acknowledge the inadequacy of legal remedies and the irreparable harm which would be caused by any such breach, and/or to relief by other available legal and equitable remedies from the consequences of such breach. Any action taken or document executed in violation of this Agreement shall be void and may be set aside upon the petition of the other parties hereto. Any costs and expenses of any such proceeding, including attorneys' fees in a reasonable amount, shall be paid by the prevailing party in any such proceeding.

(c) No Waiver. No delay or omission of any party in the exercise of any right accruing upon any default of any other party shall impair such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by any party of a breach of, or a default in, any of the terms and conditions of this Agreement by any other party shall not be construed to be a waiver of any subsequent breach of or default in the same or any other provisions of this Agreement. Except as otherwise specifically provided in this Agreement, (i) no remedy provided in this Agreement shall be exclusive but each shall be cumulative with all remedies provided in this Agreement and (ii) all remedies at law or in equity shall be available in addition to those set forth herein.

(d) Termination of Agreement. No breach of the provisions of this Agreement shall entitle any party to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect, in any manner, any other rights or remedies which any party may have hereunder by reason of any breach of the provisions of this Agreement.

(e) Force Majeure. In the event any party shall be delayed or hindered in or prevented from the performance of any act required to be performed by such party by reason of Acts of God, strikes, lockouts, unavailability of materials, failure of power, prohibitive governmental laws or regulations, riots, insurrections, the act or failure to act of the other party, adverse weather conditions preventing the performance of work, war or other reason beyond such party's control, then the time for performance of such act shall be extended for a period equivalent to the period of such delay. Lack of adequate funds or financial inability to perform shall not be deemed to be a cause beyond the control of such party.

(f) No Default. Neither party to this Agreement shall be in default under this Agreement unless the defaulting party has received written notice specifying the nature of such default and has failed to cure or commence appropriate action to cure such default within the times herein provided.

12. **Term.** The rights and easements granted hereunder shall be effective as of the date hereof and shall continue in full force for so long as the Ground Lease remains in effect, unless earlier terminated or from time to time modified as provided herein or in the Ground Lease.

13. **Additional Easements.** The Easements granted herein are cumulative of, and not in lieu of, any platted or recorded easements serving the MOB Tract which currently affect the tracts of land described in this Agreement, but the covenants and agreements of the parties hereto with respect to the Easements shall apply to such platted or recorded easements so as to specifically delineate the area and the manner in which the Easements and any platted or recorded easement serving the MOB Tract are to be used.

14. **Non-Merger.** The ownership at any time during the term of this Agreement of more than one tract, or any interest therein, by the same owner or by an owner and an affiliate entity of such owner shall not create a merger of title, estate, or other merger, including any merger of the dominant and servient estate with respect to the Easements and other covenants granted in this Agreement, and therefore shall not terminate any of the Easements or other agreements contained herein, so that all of the terms and provisions hereof shall remain in full force and effect for the period provided in this Agreement, regardless of any of the aforesaid common ownerships, now or hereafter existing, of any tract specified herein.

15. **Binding Effect.** The Easements and other terms of this Agreement shall be considered covenants running with and appurtenant to the tracts of land described herein, and both the benefits and burdens thereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns who become the owners or lessees of the tracts or portions thereof that include the Easement Areas. Each party now or hereafter owning any portion

of the tracts covered by such areas shall be liable for the performance of any covenants, obligations and undertakings herein set forth with respect to the portion of the tracts owned, but it is expressly understood and agreed that such liability shall terminate with respect to any such owner upon termination of such owner's ownership of a tract or portion thereof.

16. **Not a Public Dedication: Ownership and Control.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Hospital Campus or the MOB Tract to the general public or for the general public or for any public use or purpose whatsoever, it being the intention and understanding of the parties hereto that this Agreement shall be strictly limited to and for the purposes herein expressed, solely for the benefit of the parties hereto and their respective tenants, licensees, invitees, successors and assigns. Nothing contained in this Agreement, express or implied shall confer upon any person or entity, other than the parties hereto, their respective tenants, licensees, invitees, successors and assigns, any rights or remedies under or by reason of this Agreement. In the case of each easement or other right created herein, the owner of the benefitted property shall acquire only the limited rights to use the burdened property as set forth herein.

17. **Applicable Laws.** Each party agrees to comply with all applicable laws, ordinances, rules and regulations of any governmental authority relating to or affecting the ownership or use of the Hospital Campus and the MOB Tract.

18. **Notices.** Any notice, demand, approval or other communication provided for in this Agreement will be in writing and will be delivered by telephonic facsimile, overnight air courier, personal delivery or registered or certified U.S. Mail with return receipt requested, postage paid, to the appropriate party at its address as follows:

If to Hospital Campus Owner:

BAPTIST HEALTH SYSTEM, INC.
P.O. Box 488
Alabaster, Alabama 35007
Attention: Charles Colvert
Telephone: (205) 620-8187
Telecopy: (205) 620-7003

With a copy to:

Johnston Barton Proctor & Powell LLP
1901 6th Avenue N., Suite 2900
Birmingham, Alabama 35203-2618
Attention: Haskins W. Jones
(205) 458-9492
(205) 458-9500

If to MOB Tract Owner:

SHELBY MOB III, LLC
c/o HPS of Alabama, LLC
1900 International Park Drive, Suite 100
Birmingham, Alabama 35243
Attention: Ms. T. Lynn Adams, Manager
Telephone: (205) 967-2310
Telecopy: (205) 967-2011

with a copy to:

Sirote & Permutt, P.C.
2311 Highland Avenue South
Birmingham, Alabama 35205
Attention: Tom Ansley
Telephone: (205) 930-5300
Telecopy: (205) 930-5347

Addresses for notice may be changed from time to time by written notice to all other parties. Any communication will be effective (i) if given by mail, upon the earlier of (a) three business days following deposit in a post office or other official depository under the care and custody of the United States Postal Service or (b) actual receipt, as indicated by the return receipt; (ii) if given by telephone facsimile, when sent; and (iii) if given by personal delivery or by overnight air courier, when delivered to the appropriate address set forth.

19. **Negation of Partnership.** None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Hospital Campus Owner or MOB Tract Owner in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. The MOB Tract Owner acknowledges and agrees that the Hospital Campus Owner is not responsible for providing security for any of the Easement Areas serving or benefitting the MOB Tract.

20. **Approvals.** Unless otherwise herein provided, whenever approval is required of any party hereto such approval shall not be unreasonably withheld. Unless provision is made otherwise herein, approval shall be deemed refused within 15 days of the receipt of the request for approval, that is, if any party shall neither approve nor disapprove within said 15-day period, the party shall be deemed to have denied its approval. If a party shall disapprove, the reasons therefor shall be stated. Except with respect to a disapproval given by lapse of time, all approvals or disapprovals shall be in writing.

21. **Miscellaneous.** This Agreement shall be interpreted according to the laws of the State of Alabama. Except as specifically set forth herein, neither party shall assign their rights and

obligations under this Agreement without the prior written approval of the other party. This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the parties relating to such subject matter. This Agreement shall not be modified or amended except by mutual written agreement. In the event any provision of this Agreement is held to be unenforceable or invalid for any reason, this Agreement shall remain in full force and effect and enforceable in accordance with its terms disregarding such enforceable or invalid provision. The captions or headings in this Agreement are made for convenience and general reference only and should not be construed to describe, define or limit the scope and intent of the provisions of this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be an original and taken together shall constitute one and the same document. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document. Subject to the provisions set forth above regarding assignment by either party, this Agreement shall be binding and shall enure to the benefit of the parties hereto, and their respective heirs, legatees, executors, administrators, legal representatives, successors and assigns. The parties acknowledge that this Agreement was initially prepared by the MOB Tract Owner solely as a convenience and that all parties hereto, and their counsel, have read and fully negotiated all of the language used in this Agreement. The parties acknowledge that, because all parties and their counsel participated in negotiating and drafting this Agreement, no rule of construction shall apply to this Agreement which construes ambiguous and unclear language in favor of or against any party because such party drafted this Agreement. With respect to all provisions of this Agreement, time is of the essence. The word "including", when following any general statement, term or matter shall not be construed to limit such statement, term or matter to the specific terms or matters as provided immediately following the word "including" or to similar items or matters, whether or not nonlimiting language (such as "without limitation", "but not limited to", or words of similar import) is used with reference to the word "including" or the similar items or matters, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general statement, term or matter. References to any party in the singular, or as "him," "her," "it," "its," "itself," or other like references, shall also be deemed to include the plural or the masculine or feminine reference, as the case may be. References to any of the parties in the plural, or as "they," "them," "their," or other like references, shall also be deemed to include the singular reference.

22. **Rights of Lender for MOB Tract Owner.** The Hospital Campus Owner agrees that the rights and obligations of the MOB Tract Owner, including the rights of the MOB Tract Owner set forth in Sections 2, 3, 4, 5, 6, 7, and 8 hereof, shall be binding upon and inure to the benefit of any lender that succeeds to the rights of the MOB Tract Owner under the terms of the Ground Lease, including Union Planters Bank, National Association, its successors and assigns.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the day and year first above written.

"Hospital:"

BAPTIST HEALTH SYSTEM, INC.

By: Charles C. Colvert

Name: Charles C. Colvert

Title: Pres. SBMC

STATE OF ALABAMA)
COUNTY OF ~~JEFFERSON~~)

Shelby

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Charles C. Colvert, whose name as Shelby President of BAPTIST HEALTH SYSTEM, INC., an Alabama not-for-profit 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 the 21 day of March, 2002.

Donna G. Amelun
NOTARY PUBLIC

My Commission Expires: 3/25/2002

"LLC"

SHELBY MOB III, LLC

By its manager:
HPS of Alabama, LLC

By T. Lynn Adams
T. Lynn Adams
Manager

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that T. Lynn Adams, whose name as Manager of HPS of Alabama, LLC, an Alabama limited liability company, as manager of SHELBY MOB III, LLC, 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 said instrument, she, as such manager 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 the 22 day of March, 2002.

Janette D. Davis
NOTARY PUBLIC

My Commission Expires Jan 31, 2006

EXHIBIT "A"

Hospital Campus

Parcel I

A portion of the E $\frac{1}{2}$ of SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 35, Township 20 South, Range 3 West, and a portion of the W $\frac{1}{2}$ of SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 36, Township 20 South, Range 3 West of Huntsville Principal Meridian, Shelby County, Alabama, being more particularly described as follows: Begin at the SE corner of the E $\frac{1}{2}$ of SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 35; thence in Westerly direction along South boundary line of E $\frac{1}{2}$ of SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 35, 197.24 feet to the point of intersection with the arc of a curve turning to the left, which is Easterly boundary of right of way of U. S. Highway No. 31, said arc having a radius of 38,287.20 feet, and being subtended by a central angle of 0 deg. 12 min. 38 sec., having a chord of 140.68 feet in length, said chord forming an angle of 96 deg. 04 min. 19 sec. to the right from last mentioned course, having a length of 197.24 feet; thence along said arc of said curve 140.68 feet to the point of intersection with a straight line tangent to said arc; thence continuing along said straight line which is Easterly boundary of said Highway right of way 659.32 feet; thence turning an angle of 84 deg. 00 min. 30 sec. to the right in an Easterly direction 94.68 feet to the point of intersection with East boundary line of said Section 35; thence continuing East into Section 36, Township 20 South, Range 3 West, along said last mentioned course which is a straight line 659.49 feet to the point of intersection with the East boundary of W $\frac{1}{2}$ of SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 36, Township 20 South, Range 3 West; thence turning an angle of 88 deg. 40 min. 30 sec. to the right in Southerly direction along East boundary of said W $\frac{1}{2}$ of SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of said Section 36, 795.80 feet to the Southeast corner of W $\frac{1}{2}$ of SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of said Section 36; thence turning an angle of 91 deg. 19 min. 30 sec. to the right along South boundary of W $\frac{1}{2}$ of SW $\frac{1}{4}$ of NW $\frac{1}{4}$ said Section 36, 659.16 feet to the point of beginning; being situated in Shelby County, Alabama.

AND

Parcel II:

Lots A and B, according to the survey of Greater Shelby Office Plaza, as recorded in Map Book 7 page 141 in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

EXHIBIT "B"

MOB Tract

Commence at the Southwest corner of the Northwest quarter of the Northwest quarter of Section 36, Township 20 South, Range 3 West and run in an Easterly direction along the North line of said quarter-quarter line a distance of 316.16 feet to a point; thence deflect $88^{\circ}34'47''$ and run to the right and in a Southerly direction a distance of 262.86 feet to a point; thence deflect $136^{\circ}48'41''$ and run to the left and in a South-Easterly direction a distance of 86.47 feet to the point of beginning of the herein described parcel; thence deflect $50^{\circ}35'59''$ and run to the right and in a Southerly direction a distance of 120.67 feet to a point; thence turn an interior angle of $90^{\circ}00'00''$ and run to the right and in a Westerly direction a distance of 184.00 feet to a point; thence turn an interior angle of $90^{\circ}00'00''$ and run to the right and in a Northerly direction a distance of 120.67 feet to a point; thence turn an interior angle of $90^{\circ}00'00''$ and run to the right and in an Easterly direction a distance of 184.00 feet to the point of beginning of the herein described parcel, containing 0.5 acres, more or less.

EXHIBIT "C"

Access Areas

ACCESS EASEMENT NO. 1

Commence at the Northwest corner of the Southwest 1/4 of the Northwest 1/4 of Section 36, Township 20 South, Range 3 West, Shelby County, Alabama and run in a Westerly direction along the bearing of the North line of said 1/4 - 1/4 Section a distance of 14.33 feet to a point on a curve to the left having a central angle of $2^{\circ}37'54''$ and a radius of 5629.58 feet, said point also being on the Easterly right-of-way line of U.S. Highway 31; thence deflect $80^{\circ}09'10''$ to the left to the tangent of said curve and run in a Southerly direction along the arc of said curve and right of way a distance of 258.58 feet to the Point of Beginning of the herein described access easement; thence deflect $95^{\circ}08'59''$ from the tangent of said curve and run to the left in a Northeasterly direction a distance of 147.08 feet to a point; thence turn an interior angle of $180^{\circ}36'31''$ and run in an Easterly direction a distance of 227.72 feet to a point; thence turn an interior angle of $85^{\circ}15'31''$ and run in a Southerly direction a distance of 56.71 feet to a point; thence turn an interior angle of $90^{\circ}00'00''$ and run in a Westerly direction a distance 60.00 feet to a point; then turn an interior angle of $90^{\circ}00'00''$ and run in a Northerly direction a distance of 20.63 feet to a point; thence turn an interior angle of $274^{\circ}44'29''$ and run in a Westerly direction a distance of 104.19 feet to a point; thence turn an interior angle of $175^{\circ}24'19''$ and run in a Northwesterly direction a distance of 84.96 feet to a point; thence turn an interior angle of $270^{\circ}00'00''$ and run in a Southeasterly direction a distance of 244.23 feet to a point; thence turn an interior angle of $90^{\circ}00'00''$ and run in a Southwesterly direction a distance of 87.87 feet to a point; thence turn an interior angle of $135^{\circ}00'00''$ and run in a Northwesterly direction a distance of 54.41 feet to a point, said point being on the Easterly right-of-way line of U.S. Highway 31; thence turn an interior angle of $135^{\circ}03'20''$ and run in a Northerly direction along said right-of-way a distance of 101.81 feet to a point on a curve to the right, having a central angle of $1^{\circ}13'08''$ and a radius of 5629.58 feet; thence continue along the arc of said curve and said right-of-way a distance of 119.77 feet to the Point of Beginning of said easement.

EXHIBIT "D"

Walkway Area

ACCESS EASEMENT NO.2 (Walkway)

Commence at the Northwest corner of the Southwest 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 North line of said 1/4-1/4 Section a distance of 316.16 feet to a point; thence deflect $78^{\circ}14'10''$ to the right and run in a Southeasterly direction a distance of 331.53 feet to a point; thence deflect $17^{\circ}41'19''$ to the right and run in a Southerly direction a distance of 115.0 feet to a point; thence deflect $90^{\circ}00'00''$ to the right and run in a Westerly direction a distance of 95.48 feet to the Point of Beginning of the herein described access easement; thence deflect $90^{\circ}00'00''$ to the left and run in a Southerly direction a distance of 31.48 feet to a point; thence turn an interior angle of $90^{\circ}00'00''$ and run in a Westerly direction a distance of 15.00 feet to a point; thence turn an interior angle of $90^{\circ}00'00''$ and run in a Northerly direction a distance of 31.48 feet to a point; thence turn an interior angle of $90^{\circ}00'00''$ and run in an Easterly direction a distance of 15.00 feet to the Point of Beginning of the herein described easement.

EXHIBIT "E"

Utilities and Storm Water Areas

SANITARY SEWER EASEMENT

Commence at the Northwest corner of the Southwest quarter of the Northwest quarter of Section 36, Township 20 South, Range 3 West and run in a Westerly direction a distance of 14.33 feet to a point on a curve to the left having a central angle of $3^{\circ}51'02''$ and a radius of 5629.58 feet, said point also being on the Easterly right-of-way line of U.S. Highway 31; thence deflect $80^{\circ}09'10''$ to the left to the tangent of said curve and run in a Southerly direction along the arc of said curve and said right-of-way a distance of 378.35 feet to a point; thence continue on the tangent of said curve and said right-of-way a distance of 135.11 feet to the Point of Beginning of a 10 foot Sanitary Sewer Easement, lying 5 feet each side of, parallel to and abutting the following described centerline; thence deflect $95^{\circ}37'52''$ to the left and run in a Northeasterly direction a distance of 241.85 feet to a point; thence deflect $84^{\circ}10'00''$ to the left and run in a Northerly direction a distance of 84.57 feet to a point; thence deflect $89^{\circ}51'56''$ to the right and run in an Easterly direction a distance of 128.00 feet to the endpoint of said easement.

GAS AND WATER LINE EASEMENT

Commence at the Northwest corner of the Southwest quarter of the Northwest quarter of Section 36, Township 20 South, Range 3 West and run in a Westerly direction a distance of 14.33 feet to a point on a curve to the left having a central angle of $3^{\circ}09'31''$ and a radius of 5629.58 feet, said point also being on the Easterly right-of-way of U.S. Highway 31; thence deflect $80^{\circ}09'10''$ to the left to the tangent of said curve and run along the arc of said curve and right-of-way in a Southerly direction a distance of 310.35 feet to the Point of Beginning of the centerline of a 20 foot easement lying 10 feet each side of, parallel to and abutting the following described line:

Thence deflect $90^{\circ}00'00''$ from the tangent of the last described curve and run in an Easterly direction a distance of 42.89 feet to a point; thence deflect $64^{\circ}43'38''$ to the left and run in a Northeasterly direction a distance of 45.19 feet to a point; thence deflect $59^{\circ}14'55''$ to the right and run in an Easterly direction a distance of 379.07 feet to a point; thence deflect $94^{\circ}26'20''$ to the right and run in a Southerly direction a distance of 39.55 feet to the endpoint of said easement.

STORM SEWER EASEMENT

Commence at the Northwest corner of the Southwest quarter of the Northwest quarter of Section 36, Township 20 South, Range 3 West and run in a Westerly direction a distance of 14.33 feet to a point on a curve to the left having a central angle of $3^{\circ}06'02''$ and a radius of 5629.58 feet, said point also being on the Easterly right-of-way line of U.S. Highway 31; thence deflect $80^{\circ}09'10''$ to the left to the tangent of said curve and run in a Southerly direction along the arc of said curve and said right-of-way a distance of 304.65 feet to the Point of Beginning of a 10 foot Storm Sewer Easement, lying

5 feet each side of, parallel to and abutting the following described centerline; thence deflect $62^{\circ}15'23''$ to the left and run in a Easterly direction a distance of 256.00 feet to a point; thence deflect $27^{\circ}32'41''$ to the left and run in an Southeasterly direction a distance of 68.03 feet to a point; thence deflect $90^{\circ}00'00''$ to the left and run in a Northerly direction a distance of 21.32 feet to the Endpoint of said easement.