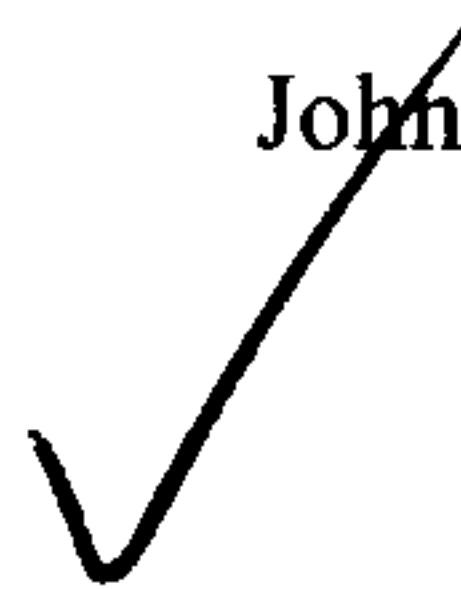


This instrument prepared by
and record and return to:
Angie Godwin McEwen
Johnston Barton Proctor & Powell LLP
2900 AmSouth/Harbert Plaza
1901 Sixth Avenue North
Birmingham, Alabama 35203
Telephone: (205) 458-9400



20021114000568650 Pg 1/8 32.00
Shelby Cnty Judge of Probate, AL
11/14/2002 14:03:00 FILED/CERTIFIED

STATE OF ALABAMA)

COUNTY OF SHELBY)

DECLARATION OF COVENANT

THIS DECLARATION OF COVENANT (this "Declaration") is made this 13th day of November, 2002, by **BAPTIST HEALTH SYSTEM, INC.**, an Alabama non-profit corporation ("BHS").

RECITALS:

WHEREAS, pursuant to that certain Statutory Warranty Deed and Deed of Correction dated as of July 26, 2002, and recorded as Instrument Number 20021014000500620 with the Probate Court of Shelby County, Alabama (the "Deed"), a copy of which is attached hereto as Exhibit A, BHS conveyed to Automotive Real Estate, Inc. ("Mazda") certain real property located in Shelby County, Alabama, as more particularly described in the Deed (the "Mazda Site");

WHEREAS, pursuant to the Deed, BHS also granted certain easements in favor of Mazda, one of which was for the drainage and flowage of water from the Mazda Site to a detention facility (the "Detention Facility") to be located on property owned by BHS, which property is more particularly described in the Deed (the "BHS Site"); and

WHEREAS, BHS has agreed to be responsible for necessary maintenance and repair of the Detention Facility.

NOW, THEREFORE, in consideration of the foregoing recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

AGREEMENT:

1. BHS agrees to be responsible for the maintenance and upkeep of the Detention Facility, and shall perform such repairs as shall be necessary to keep the Detention Facility in proper condition to retain water flowing from the Mazda Site; provided, however, BHS shall have no

responsibility for repair resulting from the negligent, willful or wanton acts of the owner of the Mazda Site (or its lessees, licensees, invitees, agents or contractors).

2. The terms and provisions of this Declaration are not personal, but are appurtenant to and shall run with the BHS Site forever. In the event of a transfer of ownership of the BHS Site, the obligations of BHS shall cease and shall become binding obligations upon the subsequent owner of the BHS Site.

Executed as of the day and year first above written.

BAPTIST HEALTH SYSTEM, INC.,
an Alabama non-profit corporation

By: *Robert E. Greene*

Name: ROBERT E. GREENE

Its: Senior Vice-President / CFO

STATE OF ALABAMA)

COUNTY OF Jefferson)


I, the undersigned, a notary public, in and for said County in said State, hereby certify that Robert E. Greene, whose name as Sr. Vice Pres. / CFO of **Baptist Health System, Inc.**, is signed to the foregoing Declaration of Covenant, 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, on the day the same bears date.

Given under my hand and official seal this 13th day of November, 2002.

Cherie A. Rose
Notary Public

My Commission Expires: 08/25/06.

EXHIBIT
A


20021014 0500620 Pg 1/6 27.00
Shelby Cnty Judge of Probate, AL
10/14/2002 12:41:00 FILED/CERTIFIED

✓ This instrument prepared by
George M. Taylor, III
3100 SouthTrust Tower
420 North 20th Street,
Birmingham, Alabama 35203

STATE OF ALABAMA)
)
SHELBY COUNTY)

STATUTORY WARRANTY DEED AND DEED OF CORRECTION

KNOW ALL MEN BY THESE PRESENTS, That in consideration of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned Grantor, **BAPTIST HEALTH SYSTEM, INC.**, an Alabama non-profit corporation, does by these presents, grant, bargain, sell and convey unto **AUTOMOTIVE REAL ESTATE, INC.**, an Alabama corporation ("Grantee"), the following described real estate, situated in Shelby County, Alabama, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Said property is conveyed free and clear of all liens and encumbrances of every description except as indicated on Exhibit B attached hereto and made a part hereof.

TO HAVE AND TO HOLD to the said Grantee, its successors and assigns forever. And said Grantor does for itself, its successors and assigns, covenant with said Grantee, that it is lawfully seized in fee simple of said premises, that it is free from encumbrances unless otherwise noted above, that it has a good right to sell and convey the same as aforesaid and that it will, and its successors and assigns shall, warrant and defend the same to the said Grantee, its successors and assigns forever against the lawful claims of all persons claiming by or through the undersigned.

AND in connection with said conveyance and in order to benefit the above-described property, Grantor does grant, bargain, sell and convey unto Grantee an easement for the benefit of Grantee, its successors and assigns for the purpose of permitting the drainage and flowage of water from above-described property (the "Dominant Tenement") over and across that portion of Grantor's parcel of land known as Lot 1-B, Golden Corral's Addition to Pelham, as recorded in Map Book 27, Page 149 in the Probate Office of Shelby County, Alabama, except for (i) that portion conveyed in Instrument No. 1997-2432 and (ii) the Dominant Tenement (said real estate being referred to as the "Servient Tenement"). The Easement includes the right of the Dominant Tenement to cause water to drain over and across the Servient Tenement both from the Dominant Tenement and from adjacent property to the north and east of the Dominant Tenement into a ditch to be constructed and maintained by the owner of the Servient Tenement on the Servient Tenement parallel to the westerly property line of the Dominant Tenement. The westerly ridge line of the ditch shall be no further than forty feet from the westerly property line of the Dominant Tenement and no closer than twenty feet. The owner of the Servient Tenement shall be required to control and dispose of water coming from the Dominant Tenement and to arrange for its transport into the public storm water system in accordance with all state, local and federal requirements. Said easement shall be permanent and perpetual and shall benefit Grantee and its successors and assigns. Said easement shall burden the Servient Tenement and shall benefit and run with the land described in Exhibit "A" hereto.

AND, Grantor does hereby declare, grant and establish for the benefit of the Dominant Tenement a temporary grading easement appurtenant to the Dominant Tenement over that portion of the Servient Tenement immediately adjacent to the southern property line of the Dominant Tenement and running for a distance of one hundred (100) feet onto said Servient

Tenement and over that portion of the Servient Tenement immediately adjacent to the westerly property line of the Dominant Tenement and running for a distance of thirty-five (35) feet onto said Servient Tenement, all for the purpose of permitting the grading of the Dominant Tenement and the Servient Tenement so as to avoid the construction of retaining walls and other structures to support the construction of buildings and improvements on the Dominant Tenement. All grading to be done pursuant to this easement shall be completed within two hundred and seventy (270) days of the date hereof and shall consist of engineered fill materials.

FURTHERMORE, for a period of fifteen (15) years from the date of the conveyance, the property, or any part thereof, shall not be used for the ownership or operation of (a) a liquor store or business other than a restaurant which derives substantially all of its business from the sale of alcohol or (b) health care related facilities that would be considered in competition with Grantor such as hospitals, nursing facilities, assisted living facilities, senior housing facilities, medical clinics, doctor's offices, wellness centers, rehabilitation facilities, diagnostic facilities, or any other health care or health related center or facility. The restriction contained in this paragraph shall run with the land and shall benefit Grantor and its successors and assigns and shall automatically terminate upon the expiration of said fifteen-year period without further action by Grantor or Grantee.

THE PARTIES FURTHER ACKNOWLEDGE AND AGREE that this instrument constitutes a correction to the Statutory Warranty Deed heretofore executed by the undersigned as of July 26, 2002, and recorded in the Office of the Probate Judge of Shelby County on July 29, 2002, as Instrument No. 2002-350610. The prior instrument incorrectly set forth the legal description of the property and the purposes of this Instrument is to supersede and replace in its entirety the legal description contained in the prior instrument. Grantor and Grantee do further

acknowledge and agree that the conveyance made hereby and by the previous instrument shall be deemed to have occurred on and as of July 26, 2002, notwithstanding the incorrect legal description contained in said instrument.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be executed by its duly authorized officer as of the 26th day of July, 2002, but executed on the dates reflected in the acknowledgements set forth below.

BAPTIST HEALTH SYSTEM, INC.,
an Alabama non-profit corporation

By: [Signature]
Its: Senior Vice-President / CFO

STATE OF ALABAMA)
)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Robert E. Greene, whose name as Senior Vice President of Baptist Health System, Inc., an Alabama non-profit corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily with full authority for and as the act of said corporation.

Given under my hand and official seal this ~~January~~ 30th day of August, 2002.

[Signature]
Notary Public
My Commission Expires: August 15, 2004

Exhibit A

Legal Description:

A part of Lot 1-B, according to Golden Corral's Addition to Pelham as recorded in Map Book 27, Page 149, in the Probate Office of Shelby County, Alabama. Said lot being situated in Section 31, Township 19 South, Range 2 West, more particularly described as follows:

Commence at the Northeast corner of said Section 31, Township 19 South, Range 2 West; thence run West along the North line thereof for a distance of 1331.88 feet to the Northwest corner of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of said Section 31; said point being also the Northeast corner of Block 3 of Cahaba Valley Park North, as recorded in Map Book 13, Page 140, in the Probate Office of Shelby County, Alabama; thence turn an angle to the left of 91 degrees 56 minutes 44 seconds for a distance of 1315.15 feet; thence turn an angle to the left of 69 degrees 43 minutes 00 seconds and run Southeasterly along the East line of said Block 3 for a distance of 202.77 feet; thence turn an angle to the right of 20 degrees 33 minutes 00 seconds and run Southeasterly along said East line of said Block 3 for a distance of 174.53 feet; thence turn an angle to the right of 8 degrees 29 minutes 59 seconds for a distance of 37.46 feet to the **point of beginning**; thence turn an angle to the right of 105 degrees 32 minutes 08 seconds for a distance of 355.14 feet; thence turn an angle to the left of 88 degrees 30 minutes 44 seconds for a distance of 354.12 feet; thence turn an angle to the left of 90 degrees 00 minutes 00 seconds for a distance of 458.13 feet; thence turn an angle to the left of 70 degrees 47 minutes 35 seconds for a distance of 111.97 feet to the point of beginning of a curve to the left whose angle to chord as measured from last described course is 25 degrees 46 minutes 59 seconds and having a central angle of 69 degrees 52 minutes 47 seconds and a radius of 236.13 feet with a chord distance of 270.47 feet; thence run along the arc for a distance of 287.99 feet to the end of said curve; thence turn an angle to the left as measured from chord of 105 degrees 05 minutes 09 seconds for a distance of 62.81 feet to the point of beginning.

Situated in Shelby County, Alabama.

Exhibit B

Permitted Exceptions:

1. General and special taxes or assessments for **2002** and subsequent years not yet due and payable.
2. Grant of Grading and Slope Easement as recorded in Instrument #2001-8587.
3. 20 foot sanitary sewer easements as shown on map recorded in Map Book 18, Page 27 and Map Book 27, Page 149.
4. Denial of all existing, future, or potential common law or statutory rights of access between subject property and I-65.
5. Restrictions appearing of record in Real Volume 268, Page 140; Real Volume 290, Page 386; Real Volume 325, Page 929; Instrument #1992-15856, and Instrument #1993-25691. NOTE: Covenants, conditions or restrictions indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin are hereby deleted to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).
6. Sign Easement and Ingress/Egress Easement as recorded in Real Volume 376, Page 686. (As to easements parcels only)
7. Right of way granted to Alabama Power Company by instruments recorded in Deed Book 101, Pages 520 and 521, Deed Book 113, Page 281; Deed Book 145, Page 378, Deed Book 118, Page 29; Real Volume 5, Page 159, Real Volume 292, Page 618 and Deed Book 179, Page 346. (As to easements parcels only)