

ASSIGNMENT AND ASSUMPTION OF GROUND LEASE

Dated as of November 19, 2004

SHELBY MOB III, LLC, an Alabama limited liability company ("**Assignor**"), **TST HOUSTON, L.P.**, a Texas limited partnership ("**Assignee**"), and **BAPTIST HEALTH SYSTEM, INC.**, an Alabama not-for-profit corporation, d/b/a Shelby Baptist Medical Center ("**Landlord**"), agree as follows:

1. **Preliminary Statements.** Landlord owns certain real property located in Shelby County, Alabama being more particularly described on Exhibit "A" attached hereto (the "**Land**"). Assignor holds leasehold title to the Land and owns the medical office building and related improvements (collectively, the "**Facility**") located on the Land pursuant to the terms of that certain Ground Lease dated as of March 28, 2002, between Landlord, as landlord, and Assignor, as tenant, a memorandum of which is recorded as Instrument Number 20020506000209240 in the Office of the Judge of Probate of Shelby County, Alabama (the "**Ground Lease**"). A copy of the Ground Lease is attached as Exhibit "B" hereto. Pursuant to the terms of the Real Estate Purchase Agreement dated as of August 11, 2004, between Assignor, as seller, and Assignee's affiliate, The Sanders Trust, L.L.C., a Delaware limited liability company, as purchaser, Assignor has agreed to assign and convey to Assignee, and Assignee has agreed to accept the assignment and conveyance of, any right, title and interest Assignor has in and to the Land and the Facility, including Assignor's leasehold interest as tenant under the Ground Lease, and Assignor and Assignee desire Landlord, among other things, to consent to such assignment and to make certain other agreements and statements, all pursuant to the terms and conditions of this Assignment and Assumption of Ground Lease (this "**Assignment**").

2. **Effectiveness; Defined Terms.** Unless otherwise indicated to the contrary, all terms and conditions of this Assignment shall be effective as of the date first written above (the "**Effective Date**"). Unless defined or otherwise indicated herein, capitalized terms used herein without definition shall have the definitions provided therefor in the Ground Lease.

3. **Assignment.** Assignor assigns and conveys unto Assignee all of Assignor's right, title and interest that Assignor has in and to the Land and the Facility, including its leasehold interest as tenant under the Ground Lease, effective as of the Effective Date.

4. **Assumption.** Assignee accepts said assignment from Assignor and expressly assumes and agrees to keep and perform all of the obligations on the part of tenant under the Ground Lease arising on or after the Effective Date.

5. **Release of Assignor.** Landlord and Assignee hereby release Assignor from all obligations and liabilities of any kind or nature whatsoever arising out of or in connection with the Ground Lease on and after the Effective Date, including the payment of rent and other charges; provided that Assignor shall not be released from any obligations or liabilities of any kind or nature arising out of or in connection with the Ground Lease before the Effective Date.

6. **Disclaimer.** NEITHER LANDLORD NOR ASSIGNOR HAS MADE AND DO NOT HEREBY MAKE ANY EXPRESS OR IMPLIED REPRESENTATION OR

WARRANTY WHATSOEVER WITH RESPECT TO THE TITLE OR CONDITION OF THE ASSIGNED RIGHTS AND INTERESTS, INCLUDING ANY REPRESENTATION OR WARRANTY REGARDING QUALITY OF CONSTRUCTION, WORKMANSHIP, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND ASSIGNEE ACKNOWLEDGES THAT ASSIGNEE ACCEPTS THIS ASSIGNMENT WITHOUT RELYING UPON ANY SUCH STATEMENT OR REPRESENTATION MADE BY LANDLORD, ASSIGNOR, THEIR AGENTS OR CONTRACTORS, OR BY ANY OTHER PERSON(S), AND THAT ASSIGNEE ACCEPTS THE LAND AND THE FACILITY "AS IS" "WHERE IS" AND "WITH ALL FAULTS."

7. **Assignor's Representations.** Assignor represents to Assignee and Landlord that, to Assignor's actual knowledge as of the date of this Assignment, (i) there is no default on the part of Landlord under the Ground Lease or event, which, with the giving of notice or passage of time or both, would constitute an Event of Default by Assignor under the Ground Lease; (ii) the Ground Lease is valid and in full force and effect and has not been modified, supplemented or amended; (iii) there are no existing or impending condemnation proceedings that could affect the Land or the Facility; (iv) all amounts due by Assignor under the Ground Lease are current and fully paid; (v) the current payment of rent is \$5,701 per year; and (vi) the annual payment of rent due under the Ground Lease has been paid through March 28, 2005.

8. **Landlord's Consent and Waiver of Right of First Refusal.** Landlord hereby (i) consents to the assignment of the Ground Lease to Assignee by Assignor effective as of the Effective Date, and (ii) waives the right of first refusal set forth in Section 25 of the Ground Lease as to the assignment to Assignee pursuant to this Assignment; provided that all of Landlord's rights set forth in such Section 25 of the Ground Lease shall remain in full force and effect in all respects except with respect to this Assignment.

9. **Reservation of Rights.** Subject to the provisions of Section 5, Landlord hereby reserves all of its rights and remedies available to it under the Ground Lease or applicable Laws, including all rights and remedies available to Landlord as a result of any Event of Default or other event of which Landlord is unaware, which event, with the giving of notice or passage of time, or both, would constitute an Event of Default. Assignor and Assignee consent and agree to the foregoing reservation of rights and remedies.

10. **Landlord's Estoppel.** Landlord represents to Assignor and Assignee that, to Landlord's actual knowledge as of the date of this Assignment, (i) there is no default on the part of Assignor under the Ground Lease or event, which, with the giving of notice or passage of time or both, would constitute an Event of Default by Assignor under the Ground Lease; (ii) the Ground Lease is valid and in full force and effect and has not been modified, supplemented, assigned or amended; (iii) there are no existing or impending condemnation proceedings that could affect the Land or the Facility; (iv) all amounts due by Assignor under the Ground Lease are current and fully paid; (v) the current payment of rent is \$5,701 per year; and (vi) the annual payment of rent due under the Ground Lease has been paid through March 28, 2005.

11. **Notices.** Any notices to the parties pursuant to the provisions hereof shall be in writing and delivered by Federal Express or other air courier or by telefacsimile, as follows:

If to Assignor:

SHELBY MOB III, LLC
2204 Lakeshore Drive, Suite 215
Birmingham, Alabama 35209
Attention: Ms. T. Lynn Adams
Fax: (205) 802-2330

With a copy to Assignor's counsel:

Mr. Tom Ansley
Sirote & Permutt, P.C.
2311 Highland Avenue South
Birmingham, Alabama 35205
Fax: (205) 930-5473

If to Assignee:

TST Houston, L.P.
Attention: Mr. Rance M. Sanders
1000 Urban Center Drive, Suite 675
Birmingham, Alabama 35242
Fax: (205) 298-0810

With a copy to Assignee's counsel:

Michael J. Brandt, Esq.
Wallace, Jordan, Ratliff & Brandt, LLC
800 Shades Creek Parkway, Suite 400
Birmingham, Alabama 35209
Fax: (205) 871-7534

All notices shall be effective upon receipt by the means set forth above. Addresses for notice may be changed from time to time by written notice to all other parties delivered in accordance with this Section.

12. **Recording.** The parties agree that the copy of the Ground Lease attached hereto as Exhibit "B" shall be detached before the recording of this Assignment in the Office of the Judge of Probate of Shelby County, Alabama.

13. **Miscellaneous.** This Assignment shall be interpreted according to the laws of the State of Alabama. Except as specifically set forth herein, no party shall assign its rights and obligations under this Assignment without the prior written approval of the other parties. This Assignment 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 among the parties relating to such subject matter. This Assignment shall not be modified or amended except by mutual written agreement. In the event any provision of this Assignment is held to be unenforceable or invalid for any reason, this Assignment 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 Assignment 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 Assignment. This Assignment 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 Assignment 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 Assignment was initially prepared by Assignor solely as a convenience and that all parties hereto, and their counsel, have read and fully negotiated all of the language used in this Assignment. The parties acknowledge that, because all parties and their counsel participated in negotiating and drafting this Assignment, no rule of construction shall apply to this Assignment which construes ambiguous and unclear language in favor of or

against any party because such party drafted this Assignment. The word “including” when used in this Assignment shall mean “including without limitation.” References to any gender shall include all genders and references to the singular shall include the plural and the plural shall include the singular.

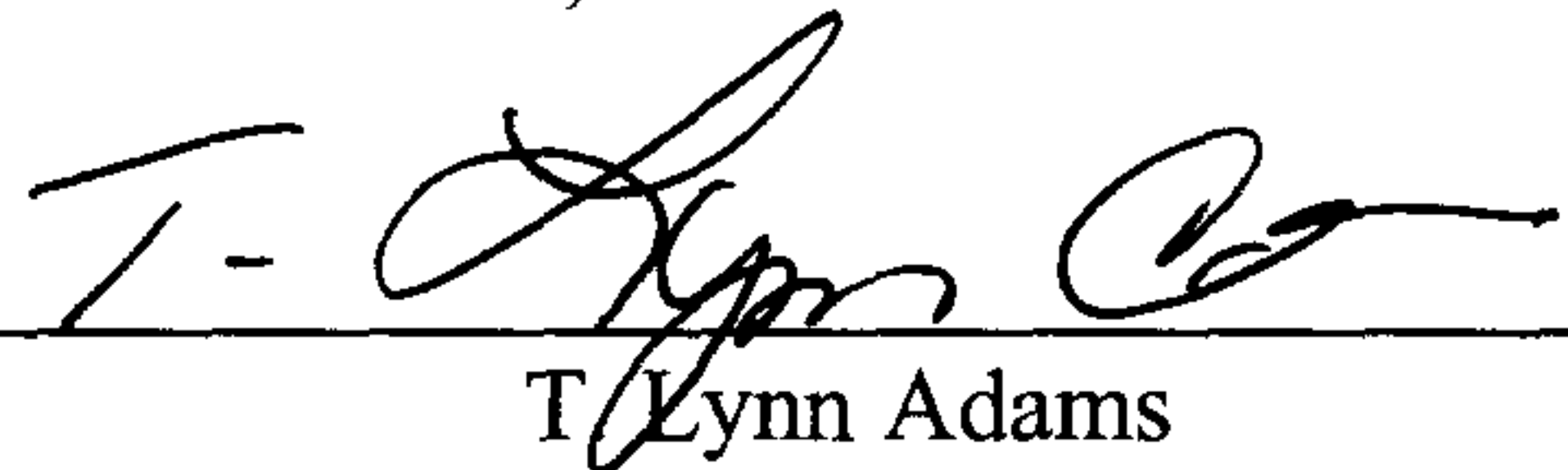
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IN WITNESS WHEREOF, Assignor, Assignee and Landlord, acting by and through their respective duly authorized officers, have executed and delivered this Assignment as of the Effective Date.

“Assignor:”

SHELBY MOB III, LLC

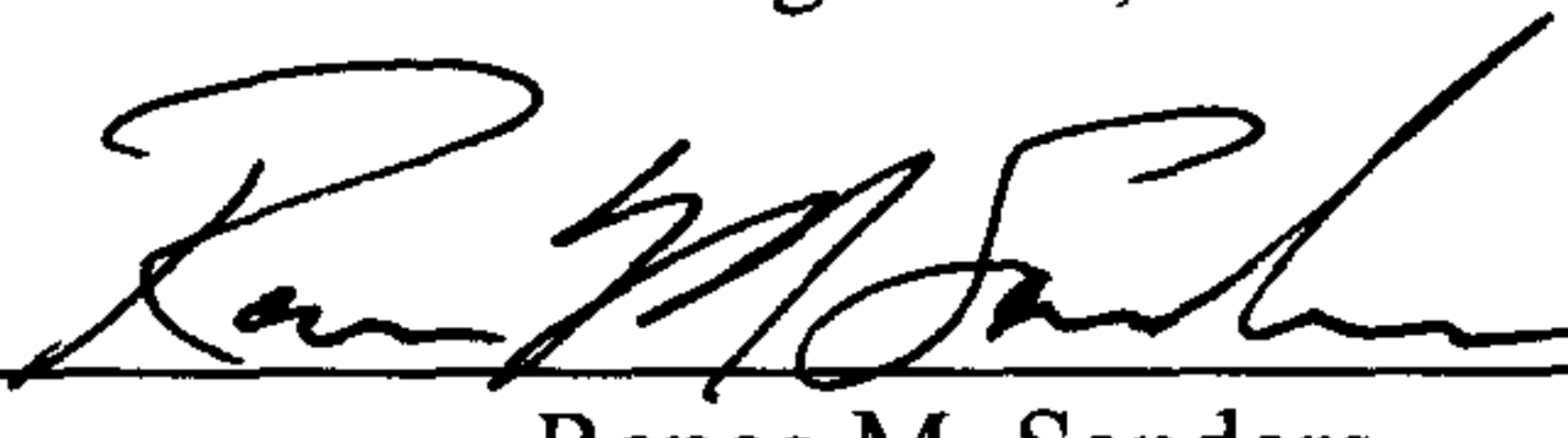
By its manager:
HPS of Alabama, LLC

By  _____
T. Lynn Adams
Manager

“Assignee:”

TST HOUSTON, L.P.

By its general partner:
TST Houston Management, LLC

By  _____
Rance M. Sanders
Manager

“Landlord:”

BAPTIST HEALTH SYSTEM, INC.

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, Assignor, Assignee and Landlord, acting by and through their respective duly authorized officers, have executed and delivered this Assignment as of the Effective Date.

“Assignor:”

SHELBY MOB III, LLC

By its manager:
IIPS of Alabama, LLC

By _____
T. Lynn Adams
Manager

“Assignee:”

TST HOUSTON, L.P.

By its general partner:
TST Houston Management, LLC

By _____
Rance M. Sanders
Manager

“Landlord:”

BAPTIST HEALTH SYSTEM, INC.

By: Charles C. Colvin

Name: CHARLES C. COLVIN

Title: VP. SGM

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 company.

Given under my hand and official seal this 19th day of November, 2004.

[NOTARIAL SEAL]



Notary Public

My commission expires: 7/5/05

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Rance M. Sanders, whose name as Manager of TST Houston Management, LLC, a Texas limited liability company, as general partner of TST HOUSTON, L.P., a Texas limited partnership, 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 manager and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 19th day of November, 2004.

[NOTARIAL SEAL]



Notary Public

My commission expires: 7/5/05

STATE OF ALABAMA)
COUNTY OF SHELBY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Charles C. Colvert, whose name as President SMC 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 18 day of November, 2004.

[NOTARIAL SEAL]

Donna G. Smiley
Notary Public

My commission expires: March 25, 2006

EXHIBIT "A"

LEGAL DESCRIPTION OF LAND

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 an Easterly direction along the North line of said quarter-quarter 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 the Point of Beginning of the herein described parcel; thence deflect $17^{\circ}41'19''$ to the right and run in a Southerly direction a distance of 120.00 feet to a point; thence turn an interior angle of $90^{\circ}00'00''$ and run to the right 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 in a Northerly direction a distance of 120.00 feet to a point; thence turn an interior angle of $90^{\circ}00'00''$ and run to the right in an Easterly direction a distance of 184.00 feet to the Point of Beginning of said parcel.

EXHIBIT “B”
COPY OF THE GROUND LEASE
(To be attached to this page)

STATE OF ALABAMA)
COUNTY OF SHELBY)

GROUND LEASE

Dated as of March 28, 2002

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

1. **Preliminary Statements.** Landlord owns the Shelby Baptist Medical Center, a full service, acute care hospital facility (the "Hospital") and related campus located in Shelby County (the "County"), Alabama. Having the offices of physicians providing medical services to patients being treated at the Hospital located physically near the Hospital will improve the delivery of patient-care services by making such physicians more readily available to perform services in the Hospital. The public will benefit from the enhanced delivery of patient-care services to be expected from having physicians more readily available at the Hospital. Insufficient office facilities to provide such benefits to the full extent desirable to serve the public good have been constructed near the Hospital in the years since construction of the Hospital. Landlord has developed a long-range plan to meet the growing need for patient care services in the County and surrounding areas and additional office facilities for its medical staff physicians will complement such long-range plan. Landlord has requested that Tenant develop, construct, and operate a four-story medical office building (the "Building") containing approximately 75,000 gross square feet to be occupied by physicians who are "Active" members of the Medical Staff of the Hospital and by such ancillary medical services as are required for the exclusive use of such physicians in order to accomplish the above stated objectives. For the foregoing reasons, Landlord recognizes that it is in Landlord's best interest to lease to the Tenant a parcel adjacent to the Hospital upon which Tenant may develop, construct, and operate the Building for the above-stated purposes subject to the terms and conditions of this Ground Lease (this "Lease").

2. **Premises.** In consideration of the rent to be paid, the mutual covenants and agreements herein contained, and of other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by the parties hereto, Landlord hereby demises and rents unto Tenant, and Tenant hereby rents and hires from Landlord the premises described upon Exhibit "A" attached hereto (the "Premises"), together with the non-exclusive right to utilize, subject to reasonable controls and restrictions imposed by Landlord from time to time for safety and traffic control, all portions of the sidewalks, walkways, driveways and streets located on the Landlord's campus from time to time which are reasonably necessary in the development, construction and operation of the Building. Landlord and Tenant shall execute a separate easement agreement (the "Easement Agreement") in form and substance satisfactory to both parties for ingress, egress, utilities, parking and any walkways between the Hospital and the Building.

3. **Term and Renewal Options.** The initial term of this Lease shall be for a period of 52 years from the date hereof. The Tenant shall have the option to extend the term of this Lease for two successive ten-year periods (each such period, an "Extended Term"), the first at the conclusion of the initial 52-year term and the second at the conclusion of the first Extended Term, if the option to extend for the first Extended Term is exercised. Termination of this Lease at any time during the original term of this Lease or any extension thereof shall terminate all options of Tenant to extend the term of this Lease for each Extended Term.

4. **Rent.**

(a) Rent. Tenant shall pay to Landlord rent in the initial amount of \$5,701 per year, as such amount is increased every fifth anniversary of the date hereof (the "Commencement Date") pursuant to Section 4(b) below (the "Rent"). The Rent shall be due and payable annually, in advance, beginning on the Commencement Date and continuing on each anniversary of the Commencement Date thereafter throughout the initial 52-year term and any Extended Term.

(b) Increases to Rent. On each anniversary of the Commencement Date, commencing with the first anniversary thereof, the Rent shall be increased by two and one-half percent of the then current Rent as of such anniversary date.

5. **Improvements and Alterations.**

(a) Preliminary Plans; Design of the Building. The Building will be designed by an architect (the "Architect"), who shall be selected by Tenant and approved by Landlord, substantially in accordance with the preliminary plans and specifications (the "Preliminary Plans") identified in Exhibit "B" attached hereto. Tenant shall cause the Architect to submit design development plans and specifications for the Building consistent with the Preliminary Plans to a person designated by Landlord (the "Landlord's Representative") for review by Landlord. If Landlord's Representative does not notify Tenant and the Architect of any disapproval or request any changes within 30 days after receipt by Landlord's Representative of the submitted final plans and specifications, approval by Landlord shall be deemed to have been granted. If Landlord's Representative shall disapprove any portion of the submitted final plans or specifications or request any amendments thereto, written disapproval describing specifically the items to which the objection is registered or written request for amendments shall be delivered to Tenant and the Architect within such thirty-day period. Landlord's Representative and Tenant will work together in submitting and responding to requests for approvals and requests for amendments and resolving items to which Landlord's Representative objects hereunder in a reasonable and expeditious manner.

(b) Amendments to the Final Plans. Landlord may request reasonable amendments or changes in the plans and specifications for the Building approved by Landlord (the "Final Plans") but shall be responsible for all increases in the cost of the Building resulting from material modifications requested by Landlord which are not consistent with the Final Plans as previously approved by Landlord; provided that the requested amendment or change will not unreasonably delay

the commencement or progress of construction of the Building. Landlord has the right to disapprove and require changes and corrections of any substandard items without incurring any costs and such costs shall be borne by Tenant. Any increased costs caused by Landlord requiring special non-standard items shall be borne by Landlord. Standard quality for all parts of the Building shall be consistent with the Preliminary Plans or, once approved by the parties, the Final Plans. Notwithstanding anything in this Section to the contrary, no change requested by Landlord in the Final Plans shall alter the general utility or structure of the Building without the prior consent of the Tenant.

(c) Changes to the Final Plans by Tenant. After the Final Plans are approved by Landlord, Tenant may make changes and modifications which are not material to the Final Plans or otherwise required to be approved by Landlord or to resolve a minor inconsistency or ambiguity without obtaining Landlord's prior approval, but with Tenant paying directly any additional costs associated therewith. Tenant shall make no material structural changes or alterations or material changes to the external decor of the Building or other related improvements without the prior written consent of Landlord. Tenant may make such interior decorative and functional configurations as are consistent with the operation of a medical office building and the Final Plans.

(d) Commencement of Construction; Delays. Subject to the provisions hereinbelow, the construction of the Building will begin not later than thirty days following the date hereof, and will be completed substantially in accordance with the Final Plans not later than 24 months from the date of commencement of construction. It is agreed that the commencement and completion dates for construction shall be extended as a result of (a) any delays resulting from changes requested by Landlord in the Final Plans, or (b) the occurrence of any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes of any kind whatsoever which render Tenant physically incapable of performing and which with the exercise of due diligence by Tenant (including any shareholder, owner, partner, or affiliate of Tenant) cannot be prevented or overcome; provided that this Section shall not apply to any delay or failure to perform hereunder due to lack of financing or the inability to procure financing to fulfill the obligations under this Lease to construct the Building in accordance with the Final Plans as provided above. The occurrence of any delay covered by this Section shall only lengthen the time for Tenant's performance by the length of such delay. Tenant shall exercise its best efforts to remedy such delay and to perform its delayed obligation with all reasonable dispatch.

(e) Contractor. The Building shall be constructed by a contractor (the "Contractor") approved in writing by Landlord prior to such Contractor's selection. The Contractor shall provide good and sufficient payment and performance bonds in the full amount of the cost of the construction of the Building under the construction contract between the Contractor and Tenant for the construction of the Building, naming Tenant and any Leasehold Lender (as defined below) as co-obligees. The date on which the Building is complete shall be the date on which the supervising architect for the Building issues such architect's certificate indicating that the Building is substantially complete in accordance with the Final Plans, except for the tenant finish work to be performed for office space of lessees in the Building. The Building shall be constructed in a good

and workmanlike manner in substantial compliance with the Final Plans and all applicable permits, authorizations, building codes, and all other applicable laws, ordinances, rules, and regulations (collectively, "Laws") of any governmental authorities having jurisdiction over the Building. Tenant shall provide or shall cause the Contractor to provide a builder's risk policy of insurance insuring the Building at the full insurable value thereof during the period that the Building is under construction, naming Tenant, any applicable Leasehold Lender, Landlord, the Contractor, and all subcontractors, materialmen, and suppliers of contractor as named insureds, as their interests may appear. Neither Landlord nor any of Landlord's agents, employees, officers, or trustees shall be liable to Tenant or any tenant of the Building or any other party for any loss, claim, or demand asserted on account of Landlord's exercise of Landlord's rights and duties contained in this Section or any failure or defect in such exercise.

(f) Landlord's Approvals. If Landlord's Representative does not notify Tenant and the Architect of any disapproval or request any changes within 30 days after receipt by Landlord's Representative of (i) any submitted plans and specifications or amendments thereto, (ii) the Architect's Agreement, (iii) the Construction Contract, or (iv) any other item required to be submitted to Landlord pursuant to the terms of this Lease, approval by Landlord shall be deemed to have been granted by Landlord upon the expiration of such thirty-day period. If Landlord's Representative shall disapprove any portion of any of the foregoing items, written disapproval describing specifically the items to which the objection is registered or written request for amendments shall be delivered to Tenant and the Architect within such thirty-day period and Tenant shall cause such item to be appropriately revised as soon as possible after receipt of notice and resubmit same to Landlord for approval pursuant to this Section. Landlord's Representative and Tenant will work together in submitting and responding to requests for approvals and requests for amendments and resolving items to which Landlord's Representative objects hereunder in a reasonable and expeditious manner.

(g) Additional Rights. Pursuant to the Easement Agreement, Landlord shall grant Tenant necessary easements for installation and maintenance of all utility lines, parking areas, access areas and drainage areas serving the Building. In addition, Landlord agrees that there will be no additional development without Tenant's prior written consent, not to be unreasonably withheld, within the greater of the following distances (the "Development Buffer"): (i) 100 feet of the Building, or (ii) the minimum setback required by any applicable Law, which will materially and adversely affect the access to or operation of the Building or unreasonably detract from the exterior appearance of the Building.

6. **Construction and Financial Reports.** During construction of the Building, the Tenant shall report monthly to Landlord on the construction progress. The report shall consist of either (i) AIA G-702 Report or (ii) such other construction and financial information as Tenant provides to any construction lender for the Building. After the construction of the Building is complete, Tenant shall provide additional reports containing such financial and other information for the Building as reasonably requested by Landlord from time to time but no more frequently than

annually. If any requested financial statements are not otherwise audited, Landlord shall be entitled to have an audit conducted so long as Landlord bears all costs thereof.

7. **Liens.** Tenant shall have no right, authority or power to bind Landlord, or any interest of Landlord in the Premises, for any claim for labor or material or for any other charge or expense incurred in the construction of the Building, including any change, alteration or addition thereto or any replacement or substitution therefor, nor to render Landlord's interest in the Premises liable to any lien or right of lien for any labor or material or other charge or expense incurred in connection therewith, and Tenant shall in no way be considered the agent of Landlord in the construction, erection, repair or operation of the Building or any replacement or substitution therefor. If any involuntary lien for labor or materials or both supplied or claimed to have been supplied to the Premises shall be filed, Tenant shall promptly pay or provide a bond to release such liens in a manner subject to Landlord's prior written approval.

8. **No Warranties.** Tenant is thoroughly familiar with the Premises, and Tenant and its agents have had ample opportunity to and, in fact, have carefully inspected the Premises prior to the date hereof. Tenant hereby warrants and represents to Landlord that the Premises are satisfactory in all respects, and Tenant accepts the Premises "AS IS", in the present condition of the Premises, as of the date of the execution of this Lease. With respect to the Premises, there are no express or implied warranties, and ALL WARRANTIES ARE EXCLUDED, INCLUDING ANY WARRANTIES OF QUALITY, MERCHANTABILITY, AND SUITABILITY OR FITNESS OF THE PREMISES FOR A PARTICULAR PURPOSE.

9. **Tenant to Maintain the Building.** Tenant shall keep the Building and any related improvements in reasonable repair and condition and in substantial compliance with all applicable Laws at all times, and shall keep the Premises appropriately landscaped and in a clean and slightly condition. In any event, the Building and the Premises shall be maintained at least to a standard consistent with the maintenance and upkeep of the Hospital and other buildings and improvements located on the Hospital campus. All maintenance, repairs and replacements to the Premises and the Building and all other improvements now or hereafter located thereon, ordinary as well as extraordinary, foreseen or unforeseen, to comply with the terms of this Section shall be made by Tenant, at Tenant's sole cost and expense, promptly as and when necessary. Landlord shall have no responsibility for any maintenance, repairs, and replacements to the Premises, the Building or any improvements now or hereafter located on the Premises, all of which shall be the sole and exclusive responsibility of Tenant and shall be performed at the sole cost and expense of Tenant. All replacements made by Tenant hereunder shall equal or exceed the original quality of the item replaced. In the event Tenant shall fail to commence any required repairs to be made by it under the provisions of this Lease within 30 days after written notice from Landlord to do so and thereafter to diligently and continuously pursue the completion of such repairs plus any additional time required due to Unavoidable Delays, Landlord may, at its option, enter onto the Premises and repair the same, and the cost and expense of such repairs with interest at the rate of ten percent per annum, shall be due and payable by Tenant as additional rent to Landlord on demand.

10. **Fixtures and Personal Property Furnished by Tenant.** Tenant shall have the right for 30 days after to the termination or expiration of this Lease to remove any and all personal property, including medical equipment and trade fixtures that it may have stored or installed in the Building or upon the Premises; provided that Tenant shall repair any damage to the Building or Premises resulting from the removal of any such property. Any such property of Tenant left in the Building or on the Premises after the expiration or termination of this Lease shall become the property of Landlord on such expiration of such 30 days.

11. **Title and Quiet Enjoyment.** Landlord represents and warrants that it is authorized to execute this Lease for the term herein granted under the terms and conditions provided herein. Landlord agrees to provide an opinion of counsel acceptable to Tenant that proper action has been taken by its Board of Trustees to enter into this Lease. Landlord covenants that Tenant, on the performance of the terms and conditions of this Lease, shall and may peaceably and quietly have, hold and enjoy the Premises for the full term of this Lease.

12. **Utilities.** Tenant shall be responsible to pay for all utilities, including water, gas, electricity, heating, sewer, telephone and other utilities used on or about the Premises; provided that in the event Tenant purchases its electricity from Landlord, Tenant shall purchase all such electricity at the rate charged to the Landlord. Notwithstanding the foregoing, Landlord reserves the right to require Tenant to purchase electricity directly from Alabama Power Company or other electric utility provider.

13. **Payment of Taxes or Assessments.**

(a) On the request of either party, Tenant and Landlord agree to cooperate to identify the Premises as a separate tax parcel, in compliance with applicable state and local Laws. Tenant shall pay or cause to be paid all real and personal property taxes, general and special, ordinary or extraordinary, foreseen or unforeseen, and all other charges, assessments including all assessments for public improvements or benefits, whether or not completed or commenced prior to the date hereof and whether or not to be completed during the initial term or any Extended Term hereof and taxes of every description, levied on or assessed against the Premises, the Building and other improvements located on the Premises, any personal property owned by Tenant and located on or in the Premises, the Building, the leasehold estate, or any subleasehold estate, to the full extent of installments assessed during the initial term and any Extended Term. Tenant shall make all such payments directly to the charging or taxing authority before delinquency and before any fine, interest, or penalty shall become due or be imposed by operation of law for their nonpayment. If, however, applicable Law expressly permits the payment of all or any of the above items in installments (whether or not interest accrues on the unpaid balance), Tenant may, at its option, pay such items in installments with any interest before delinquency and before any fine, interest, or penalty shall become due or be imposed by operation of law for nonpayment. All payments of taxes or assessments or both, including permitted installment payments, shall be prorated for the initial year of the Term and for the year in which this Lease expires or is terminated. Landlord shall forward

any notices of assessments to Tenant within 30 days of receipt in order to enable Tenant to contest such assessment consistent with the terms of this Lease.

(b) Tenant will, at all times during the term of this Lease, save harmless Landlord from all such taxes, assessments and charges and from all liens and penalties in conjunction therewith.

(c) Nothing herein shall be construed as preventing or interfering with the contestation by Tenant, at its own expense, of any tax, assessment, charge, lien or claim of any kind in respect to the Premises or the improvements thereon and Tenant shall not be considered in default with respect to payment thereof for so long as Tenant is actively contesting the same and the matter remains undetermined by final judgment. If requested by Tenant, Landlord shall join in any proceeding for contest or review of such taxes or assessments, but the entire cost of the proceedings shall be paid by Tenant.

14. Leasehold Financing.

(a) Leasehold Mortgage. Subject to the express conditions contained herein, Tenant shall have the right, at any time on one or more occasions, to grant a leasehold mortgage (the "Leasehold Mortgage") in Tenant's ownership interest in the Building and leasehold interest in the Premises (collectively, the "Leasehold Interest") on such terms, conditions, and for such duration not to exceed the term of this Lease as Tenant shall determine, and to enter into any and all extensions, modifications, amendments, replacements, and refinancings of any such leasehold mortgage as Tenant may desire so long as (i) the Leasehold Mortgage secures purchase money financing taken back in connection with any disposition of the Leasehold Interest or the holder is a national bank, savings and loan association, insurance company, pension plan, real estate investment trust or other institutional form of lender with assets of at least \$500,000,000; (ii) the terms and conditions of the Leasehold Mortgage and any related indebtedness are consistent with then prevailing commercial lending practices regarding unsubordinated ground leases; and (iii) the holder of any Leasehold Mortgage (the "Leasehold Lender") acknowledges (A) the unsubordinated nature of the Landlord's fee simple interest in the Premises, and (B) the requirement that all leasing and use obligations be honored for the entire term of the Lease, notwithstanding any foreclosure of the Leasehold Mortgage or other action of any nature undertaken by the Leasehold Lender with respect to the Premises.

(b) Notice of Default. If the Leasehold Lender shall register with Landlord its name and address in writing, Landlord, on serving Tenant any notice of default, notice of a matter on which Landlord may predicate or claim a default, or any other notice pursuant to the provisions of, or with respect to, this Lease, shall at the same time serve a duplicate counterpart of such notice on the then Leasehold Lender by Federal Express or other reputable overnight delivery service or by certified mail, return receipt requested, addressed to the Leasehold Lender at the address registered with Landlord. No notice by Landlord to Tenant hereunder shall be deemed to have been duly given to Tenant unless and until such duplicate counterpart thereof has been so served on the Leasehold Lender.

(c) Right to Cure Defaults. The Leasehold Lender, shall have the right, within the period as otherwise as herein provided, to remedy or cause to be remedied any default or matter on which Landlord may predicate or claim a default noticed by Landlord, and Landlord shall accept such performance by or at the instigation of the Leasehold Lender as if the same had been performed by Tenant. Tenant constitutes and appoints the Leasehold Lender as Tenant's agent and attorney in fact with full power, in Tenant's name, place and stead, and at Tenant's cost and expense, to perform any of Tenant's obligations according to the provisions of this Lease. In this regard, the Leasehold Lender is irrevocably granted full and complete access and right of entry to the Premises by Landlord and Tenant on reasonable written notice to Landlord for purposes of curing any non-monetary default of Tenant declared to exist by Landlord under the terms of this Lease.

(d) Mortgagee Grace Period. During such time as any Leasehold Mortgage remains unsatisfied of record, the Landlord shall not terminate this Lease or evict the Tenant as a result of any default by Tenant hereunder if, before the expiration of 180 days after the date of written notice of default to Leasehold Lender (the "Mortgagee Grace Period"), the Leasehold Lender shall have cured or caused to be cured such default; provided that:

(i) in the event any non-monetary default is not cured or caused to be cured by the Leasehold Lender prior to the expiration of the Mortgagee Grace Period specified herein, the default shall nevertheless be deemed cured if within the Mortgagee Grace Period the Leasehold Lender commences or causes to commence curative action and the same is continued to completion with reasonable diligence;

(ii) if any default is not reasonably susceptible of being cured by the Leasehold Lender and before the expiration of the Mortgagee Grace Period, the Leasehold Lender or its designee shall deliver to Landlord its agreement and obligation to perform and observe the covenants and conditions to be performed by Tenant in this Lease so long as it remains the Leasehold Lender, excluding any covenant related to a default not reasonably susceptible of being cured by the Leasehold Lender, then, any default not reasonably susceptible of being cured by the Leasehold Lender shall be deemed to be cured; provided that lack of money or other financial resources shall never be a reason for not curing a default hereunder;

(iii) nothing herein contained shall in any way affect, diminish, or impair Landlord's right during the Mortgagee Grace Period to pursue any remedy specified herein other than termination of this Lease or eviction of the Tenant, subject to all of the provisions hereof; and

(iv) if the Leasehold Lender, after use of its good faith reasonable efforts, is unable to cure any default which exists under this Lease within the Mortgage Grace Period as a result of any bankruptcy proceeding, court order or the unenforceability or potential unenforceability of any self-help provisions provided for in this Lease or in the Leasehold Lender's loan documents, the Landlord shall not terminate this

Lease or seek to evict the Tenant even after the Mortgagee Grace Period has expired so long as: (A) the Leasehold Lender provides the Landlord with a written undertaking to promptly cure the subject default as soon as the Leasehold Lender is permitted to do so; (B) a letter of credit, surety bond or financial guarantee acceptable to the Landlord is pledged to the Landlord to assure the Landlord that the subject default will be cured; (C) the Leasehold Lender diligently and continuously seeks to obtain appropriate legal relief to permit it to cure the subject default, including proceeding with foreclosure to the extent permitted to do so; and (D) the Leasehold Lender promptly proceeds to cure the subject default as soon as it is permitted to do so.

(e) New Lease. On the prior written request of the Leasehold Lender, within 90 days of termination of this Lease, Landlord shall enter into a new or direct lease of the Premises with the Leasehold Lender, or its permitted designee (subject to the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed), upon any termination of this Lease. Such new or direct lease shall be effective as of the date of termination of this Lease, and shall be for the remainder of the term of this Lease and at the rent and additional rent and on all the agreements, terms, covenants, and conditions of this Lease; provided that no provision shall be contained in the new lease which relates to any default under this Lease not reasonably susceptible of being cured by the Leasehold Lender as such defaults are defined herein. To the extent Landlord acquires any interest related to the Building as a result of the termination of this Lease, Landlord shall undertake all such action as reasonably requested by the new tenant to place said tenant in the same position that the Tenant would have enjoyed had no termination of this Lease occurred. On the execution of such new or direct lease, the tenant named therein shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for its termination and shall otherwise fully remedy or agree in writing to timely remedy any non-monetary defaults existing under this Lease, other than a default which is not reasonably susceptible of being cured by the Leasehold Lender, which such defaults shall be, and shall be deemed to be, waived. The new tenant shall pay all necessary and reasonable expenses, including reasonable counsel fees and court costs incurred by Landlord in terminating this Lease and in recovering possession of the Premises as well as in the preparation, execution and delivery of such new or direct lease. In addition, nothing contained herein shall release Tenant from any of its obligations under this Lease which may not have been discharged or fully performed by any Leasehold Lender, or its permitted designees.

(f) Notice of Condemnation. The parties hereto shall give the Leasehold Lender written notice of any condemnation proceedings affecting the Premises. The Leasehold Lender shall have the right to intervene and be made a party to any such condemnation proceedings and the parties hereto hereby consent that the Leasehold Lender may be made such party or intervener.

(g) Contest of Taxes and other Impositions. If the Leasehold Lender, in good faith, shall desire to contest the validity or amount of any tax, levy, special or general assessment, water and sewer rent, or other governmental imposition or charge payable by it with respect to the Premises or the Building, the Leasehold Lender shall so notify Landlord and Tenant in writing, and the

Leasehold Lender shall be entitled, in good faith, to contest the same in appropriate proceedings in the name of Landlord or Tenant, if necessary; provided that upon reasonable request of Landlord, the Leasehold Lender shall post a bond or make payment under protest to stay any action commenced against the Premises or the Building, or Landlord to collect any past due taxes, levies, special or general assessments, water and sewer rent, or other governmental imposition, charge, or penalty which may accrue.

(h) No Liability for Leasehold Lender. Except as otherwise expressly provided herein, no Leasehold Lender shall be liable to perform any of Tenant's obligations under this Lease unless and until the Leasehold Lender shall become the owner of the Leasehold Interest, and then only for as long as it remains the owner of the Leasehold Interest. On any assignment of this Lease by any Leasehold Lender or any owner of the Leasehold Interest whose interest shall have been acquired by, through, or under any Leasehold Lender or shall have been derived immediately from any Leasehold Lender, the assignor shall be relieved of any further liability which may accrue hereunder from and after the date of such assignment; provided that the foregoing release of liability shall be effective only if Landlord consents to such assignment in writing.

(i) No Modification or Surrender of Lease. This Lease shall not be modified or surrendered to Landlord or canceled by Tenant (whether pursuant to the terms of this Lease or otherwise), nor shall the Landlord accept a surrender of this Lease, without the prior written consent of the Leasehold Lender, nor shall any merger result from the acquisition by, or devolution upon, any one entity of the fee and leasehold estates in the Premises so long as any Leasehold Mortgage remains in existence; provided that nothing contained in this Section shall diminish the rights otherwise expressly provided to Landlord herein upon the occurrence of any event of default, including the rights of Landlord to terminate this Lease as provided herein.

(j) Landlord to Make Reasonable Modifications. Notwithstanding any other provision contained in this Section, Landlord agrees to enter into reasonable modifications which are requested in this Section by any Leasehold Lender from time to time to enable the Tenant to obtain financing or refinancing for the Leasehold Interest, so long as (i) the Leasehold Lender is a national bank, savings and loan association, insurance company, pension plan, real estate investment trust or other institutional form of lender with assets of at least \$500,000,000; and (ii) the modifications requested pursuant to this Section are consistent with leasehold mortgagee provisions generally required by institutional lenders with respect to unsubordinated ground leases.

(k) Assignment for Financing. Landlord further agrees that for the sole purpose of obtaining financing or refinancing for the Leasehold Interest, Tenant may, with prior approval of Landlord, assign this Lease to a wholly owned subsidiary; provided that Tenant continues and remains liable under each and every provision hereof and guarantees in form reasonably acceptable to Landlord and its counsel that the subsidiary will comply with the terms of the Lease. Such subsidiary shall have no right of assignment without the prior written approval of Landlord. Tenant may not sell transfer, assign, or convey in any manner all or any part of such wholly owned

subsidiary except as may be reasonably required by a construction or permanent lender with regard to pledging the stock of such subsidiary to secure such loan and with the prior approval of Landlord.

15. **Estoppel Certificate.** Landlord and Tenant shall each, without charge, at any time and from time to time hereafter within fifteen days after written request of the other, certify by written instrument duly executed and acknowledged to any Leasehold Lender or proposed Leasehold Lender or any other person, firm or corporation specified in such request; (i) as to whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment; (ii) as to the validity and force and effect of this Lease in accordance with its terms; (iii) as to the existence of any default hereunder; (iv) as to the existence of any offsets, counterclaims or defenses thereto on the part of such other party; (v) as to the commencement and expiration dates of the terms of this Lease; (vi) the amount of rent and confirmation of the date through which rent has been paid; and (vii) as to any other matters as may be reasonably requested. Any such certificate may be relied upon by the party who requested it and any other person, firm or corporation to whom the same may be exhibited or delivered.

16. **Insurance.**

(a) **Liability Insurance.** Tenant, during the entire term of this Lease, shall at its expense maintain (i) if required by applicable law, worker's compensation insurance complying with the Laws of the State of Alabama, (ii) employer's liability insurance with limits of not less than \$500,000 for each accident; (iii) sufficient general commercial liability insurance to protect and indemnify the Landlord and the Tenant from any and all claims of liability resulting from the proposed development, construction or operation of the Building with minimum limits of \$1,000,000 combined single limit per occurrence for bodily injury, sickness or disease sustained by any person, including death at any time resulting therefrom, and property damage; and (iv) excess liability coverage above the insurance limits provided for the insurance coverage required in (ii) and (iii) above with a minimum \$5,000,000 combined single limited per occurrence for bodily injury, sickness, or disease sustained by any person, including death at any time resulting therefrom, and property damage and \$5,000,000 per policy year in the aggregate. Each of the policies providing coverage specified above shall name Tenant as a named insured. Each of the policies providing coverage specified in (ii), (iii) and (iv) shall name Landlord and Landlord's officers, employees, agents, directors, trustees, and all other parties to whom Landlord has indemnification obligations, hereinafter called the "Indemnitees," as additional insureds under said policies, shall contain a waiver of subrogation in favor of Landlord, and shall be endorsed to provide that all such insurance coverage is primary insurance as regards any other insurance carried by Landlord. Each of the policies providing coverage above and the hazard insurance policy hereinafter described shall contain a waiver of subrogation in favor of Landlord.

(b) **Casualty Insurance.** Tenant, during the entire term of this Lease, shall maintain in effect hazard insurance in "all-risk" form on all structures erected on the Premises from time to time providing coverage for fire and such other hazards as are normally insured by commercial property owners in the immediate area in which the Premises are located. Unless otherwise approved by

Landlord, deductible amounts shall not exceed those generally prevailing in the area in which the Premises are located and coverage limits shall be equal to full insurable value or 90% of replacement cost, whichever is less. A replacement value endorsement shall also be obtained if requested by Landlord and if the cost of such endorsement does not exceed 20% of the premium otherwise due for the aforesaid coverage. The Landlord shall be named as a loss payee on all such policies of insurance but all rights of the Landlord shall be (i) junior and subordinate to the rights and interests of the Leasehold Lender; and (ii) limited to requiring reasonable assurances that all available insurance proceeds, after required reduction of any indebtedness secured by a Leasehold Mortgage, are appropriately escrowed for completion of all obligations of the Tenant under this Lease.

(c) Copies of Policies. The Tenant shall provide Landlord with copies of all insurance policies specified herein on or before April 15 of each calendar year and shall provide Landlord with such further evidence of insurance as reasonably requested from time to time. In addition, the Tenant shall provide the Landlord with written assurance from each insurer that no such policy of insurance shall be modified or canceled without 20 days' prior written notice to the Landlord, and that any notice of non-renewal of such policy of insurance shall be forwarded to Landlord by at least ten days prior to the termination date of such policy.

(d) Purchase of Insurance by Landlord. If at any time during the term of this Lease, the Tenant fails to maintain the insurance required by this Section, the Landlord shall be entitled, at its option, to obtain any or all such insurance. In such event, the Landlord shall be reimbursed by the Tenant for all costs and expenses associated with obtaining such insurance upon 30 days' prior written notice from the Landlord to the Tenant.

17. **Indemnification.** Tenant shall indemnify and save harmless Landlord against any and all claims, causes of action, debts, demands or obligations, including costs and reasonable attorneys' fees, which may be made against Landlord or against Landlord's title to the Premises arising by reason of, or in connection with, any alleged act or omission of Tenant or any person claiming by, through or under Tenant resulting from the development, construction or operation of the Building; provided that Tenant shall not be required to indemnify and save harmless Landlord against any and all claims, debts, demands or obligations which may be made against Landlord or against Landlord's title to the Premises arising by reason of, or in connection with, any negligent or intentional act or omission of Landlord.

18. **Damages or Destruction.** In the event of damage to or destruction of the Building or other improvements erected on the Premises to the extent insurance proceeds are available the Tenant shall, within a reasonable time and in a reasonable manner, restore the Building to substantially the same form with at least as good workmanship and quality as the portions of the Building being restored or replace it with a new building of at least the same size as the Building with at least as good workmanship and quality as originally existed. Any reconstruction or repair undertaken by Tenant pursuant to this Section shall be subject to the same terms and conditions contained in this Lease related to the initial construction of the Building, including approval of the plans and specifications for such reconstruction or repair by Landlord in writing prior to the

commencement of such reconstruction. Landlord shall have the right to hold all insurance proceeds not paid to or held for disbursement by the Leasehold Lender and disburse the same in a reasonable manner as the restoration or rebuilding of the Building.

19. Occupants of the Building.

(a) Initial Use. Except for any Incidental Services (as defined below), Tenant shall not use or permit the Premises to be used for medical purposes which compete with the services provided by the Hospital unless the services were provided by the tenants of the Building prior to the date such services were first offered by the Hospital. As used herein, the term "Incidental Services" means services to patients where the applicable tenant is the treating professional and such services are merely incidental and ancillary to the ordinary and customary course of treatment within such tenant's medical practice and not the primary service rendered by such tenant in the course of patient treatment.

(b) Occupancy Limited to Qualified Tenants. Space in the Building may only be leased to Qualified Tenants (as defined below), subject to the provisions of this Section and to medical office leases ("Tenant Leases") the form which shall have been approved by Landlord. As used herein, the term "Qualified Tenant" means (i) a Staff Member (as defined below), (ii) a professional corporation, partnership, limited liability company or other entity, all of whose physician shareholders, partners or members who will occupy space in the Building are Staff Members, or (iii) a health care provider that manages or employs physicians, all of whose physicians that will occupy space in the Building are Staff Members. As used herein, the term "Staff Member" means a member in good standing of the active medical staff of the Hospital, as determined in accordance with the applicable by-laws for the Hospital, as amended from time to time; provided that any amendment to such by-laws that makes the definition of "Staff Member" more restrictive than under the by-laws in effect at the time of execution of each Tenant Lease shall not apply for purposes of applying the provisions of this Section to such Tenant Lease.

(c) Use Restrictions. The parties acknowledge that Landlord has made and intends to make a substantial investment at the Hospital in a wide array of outpatient and related commercial services which will be conveniently accessible for patients of occupants of the Building, and that it would be wasteful and inefficient for Tenant or any tenant or occupants of the Building to duplicate at the Building the services provided by the Hospital. Accordingly, Tenant shall not permit the Premises or any improvements thereon or any portion thereof to be used for the following services or uses without the express prior written approval of Landlord, which approval shall be at the sole discretion of Landlord and may be withheld for any reason, reasonable or unreasonable, or for no reason at all: (i) a snack bar, cafeteria or restaurant; (ii) lounge serving alcoholic beverages, (iii) fitness center; (iv) home health services; (v) sales of durable medical equipment, (vi) a pharmacy; (vii) ambulatory surgery; (viii) physical therapy; (ix) reference diagnostic radiology; (x) reference diagnostic imaging such as ultrasound, computer assisted tomography scans, and magnetic resonance images; (xi) cardiac catheterization or (xii) outpatient surgery centers; provided that tenants of the Building shall not be prohibited from performing the services or providing the facilities described

in items (iv) through (xii) as Incidental Services to their own patients. Notwithstanding the foregoing limitations, Landlord or an affiliated entity or purchaser of Landlord or of the Hospital shall be permitted to lease and use space in the Building to perform any of the services or businesses restricted under the terms of items (i) and (iii) through (xii), or any other use which is compatible with services offered by the Hospital, so long as Landlord or an affiliated entity or purchaser of the Hospital or Landlord shall operate the Hospital.

(d) Tenant Leases to Contain Restrictions. All Tenant Leases, subleases and instruments of any other nature entered into regarding occupancy of office space in the Building (i) shall be on forms approved by Landlord, (ii) shall include the restrictions set forth in Sections 19(a), (b) and (c), and (iii) shall have the following legend placed therein:

THIS INSTRUMENT IS SUBJECT TO THE TERMS AND CONDITIONS OF THAT CERTAIN GROUND LEASE BETWEEN BAPTIST HEALTH SYSTEMS, INC., AN ALABAMA NOT-FOR-PROFIT CORPORATION, AND SHELBY MOB III, LLC, AN ALABAMA LIMITED LIABILITY COMPANY, DATED MARCH 28, 2002, AND MUST BE APPROVED BY THE GROUND LESSOR.

(e) Reduction of the Staff Members or Bed Capacity. Notwithstanding the provisions of Sections 19(a), (b) and (c) above, during any period that either (i) the number of Staff Members is reduced or limited by 50% or more from the number of such Staff Members as of the date of this Lease, or (ii) 50% or more of the bed capacity of the Hospital, as licensed on the date hereof pursuant to Certificate of Need Rules and Regulations promulgated by the Alabama State Health Planning and Development Agency and Ala. Code. (1975) §§ 22-21-260 through 22-21-278 (collectively, the "CON Laws"), ceases to be used as full-service, acute care beds, then, subject to the provisions hereinafter set forth, Tenant may lease space in the Building to occupants other than Qualified Tenants. Notwithstanding the foregoing, (A) Tenant shall make reasonably diligent efforts for 90 days after the occurrence of either the events referred to in subsection (i) or (ii) above, to lease space in the Building to Qualified Tenants, and periodically to communicate in writing to Landlord regarding its efforts to lease space in the Building to Qualified Tenants during and after said ninety-day period, (B) so long as the Hospital continues to be used as a full service, acute care health facility as currently licensed under the CON Laws, all tenants must be Qualified Tenants at all times, (C) no non-physician tenant shall be permitted that competes with the medical services provided by Landlord, and (D) no use shall be permitted in the Building which is an unreasonable nuisance to adjoining tenants, their employees or customers. In addition, so long as the Tenant otherwise complies with the express provisions of this Lease, no default shall be deemed to have occurred hereunder by reason of an occupant ceasing to maintain its status as a Qualified Tenant, but Tenant shall not consent to any modification, extension or renewal of any Tenant Lease if the occupant so ceases to maintain its status as a Qualified Tenant. At such time as neither of the events referenced in subsections (i) or (ii) above shall continue to exist, the provisions of Sections 19(b) and (c) shall apply to all new Tenant Leases.

(f) Reduction of Staff Members. Irrespective of the foregoing, if (i) the numbers of Staff Members is materially reduced or limited, (ii) Landlord does not continue to operate the Hospital as a full-service, acute care facility, or (iii) other extraordinary events occur which make it impracticable to fully lease the Building after diligent efforts in accordance with the provisions of this Section, then Landlord and Tenant shall be obligated to act reasonably and in good faith to restructure the restrictions of this Section in a manner which will permit Tenant the reasonable opportunity to obtain occupants other than Qualified Tenants for otherwise unoccupied space in the Building.

20. **Condemnation.**

(a) Total Taking. If there is a Condemnation (as defined below) of all of the Premises, or any appurtenant easement to the Premises or any portion thereof sufficient to prevent the practical use of the Building for its permitted use under this Lease, this Lease shall terminate and the rent shall be abated during the unexpired portion of this Lease, effective on the date (the "Taking Date") that the Condemnor (as defined below) has the right to possession of the property that is the subject of the Condemnation. As used herein, the term "Condemnation" means the transfer of all or any part of the Premises as a result of (i) the exercise of any governmental power, whether by legal proceedings or otherwise, by a Condemnor (as defined below), or (ii) a voluntary sale or transfer by Landlord to any Condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending. As used herein, the term "Condemnor" means any public or quasi-public authority, or private corporation or individual, having the power of eminent domain.

(b) Award Distribution - Total Taking. In the event of a condemnation of the Premises under Section 20(a), all compensation awarded in connection with such Condemnation shall be distributed as follows:

- (i) First, to the discharge of any Leasehold Mortgage;
- (ii) Second, to Landlord in amount equal to the rent payable for the remainder of the term of this Lease discounted to a present value as of the Taking Date calculated using a discount rate of 7.5% percent per annum;
- (iii) Third, to Landlord in an amount equal to the fair market value of the Landlord's residual interest in the Premises after the expiration of the stated term of this Lease (the "Residual Interest") discounted to a present value as of the Taking Date calculated using a discount rate of 7.5% percent per annum, as agreed upon by Landlord and Tenant; provided that if Landlord and Tenant are unable to agree upon the Residual Interest, it shall be determined by appraisal as more fully provided below; and
- (iv) Fourth, the balance to Tenant or to such other parties as have (and have not waived) rightful claims to such condemnation award.

(c) Partial Taking. If there is a Condemnation of a portion of the Premises that does not prevent the practical use of the Building for its permitted use under this Lease thereby, this Lease shall not terminate, except as to the area so taken, and all of Tenant's obligations hereunder shall continue in full force and effect, except for the rent after the Taking Date shall be abated in proportion to the area of the Premises so taken. Following the Taking Date, Tenant shall make such repairs, restorations, and alternations as may be necessary, in order to restore the part of the Premises not taken to useful condition.

(d) Award Distribution - Partial Taking. In the event of a Condemnation of a portion of the Premises under which this Lease does not terminate, the award for such Condemnation, shall be deposited with the Leasehold Lender(or, if there be none, with Landlord) and disbursed to pay or any restoration and repair to the Building as is necessary to place the remainder of the Premises in a usable condition in the same manner as is provided for the disbursement of insurance proceeds to restore a Casualty Loss pursuant to Section 18. If all of the condemnation award is not needed to repair or restore the Premises or if a portion of the Premises is taken so that no repair and restoration work is required, the award shall be distributed as set out above in Section 20(b), except that no distribution shall be made for rent under 20(b)(ii) above and the fair market value of the Residual Interest in Section 20(b)(iii) shall be limited to the portion of the Premises so taken.

(e) Notice of Proceedings. Tenant shall immediately notify Landlord and the Leasehold Lender of the commencement of any eminent domain, condemnation, or other similar proceedings with regard to the Premises.

21. **Appraisal Procedures.** If fair market value of the Residual Interest cannot be agreed upon by Landlord and Tenant and is required to be determined, the fair market value of the Residual Interest shall be determined in accordance with this Section.

(a) Selection of Appraisers. Within 20 days after the date upon which it is determined by either party hereto that such party is unable to agree with the other upon the value of the Residual Interest and sends written notice to the other party of such inability to agree, each party hereto shall designate in written notice to the other an appraiser who may be, but is not required to be an MAI appraiser, but who is in any event experienced in valuing commercial real estate. If for any reason one party shall fail to name an appraiser within the time period set out above, then the one appraiser named by the other party hereto shall be the sole appraiser hereunder and such appraiser's determination of the fair market value of the Residual Interest shall be binding on all parties hereto.

(b) Determination of Fair Market Value of Residual Interest. Each of the appraisers shall appraise the Residual Interest as of the date of termination or other applicable date and deliver a written report to each party hereto setting out the fair market value of the Residual Interest. If the higher of the two appraisals is not more than fifteen percent higher than the lower of the two appraisals, then fair market value of the Residual Interest being appraised shall be the average of the two appraisals. If the higher of the two appraisals is more than fifteen percent higher than the lower

of the two appraisals, then each of said appraisers shall agree upon and select a third appraiser who shall meet the qualifications set out above for the first appraiser. The third appraiser shall thereupon determine the fair market value of the Residual Interest. The fair market value of the Residual Interest as determined by the third appraiser shall be the fair market value of such Residual Interest for all purposes hereunder and shall be binding upon Landlord and Tenant.

(c) Enforcement of Appraisal Procedures. This provision for determination by appraisal shall be specifically enforceable to the extent such remedy is available under applicable law, and any determination hereunder shall be final and binding upon the parties except as otherwise provided by applicable law. Landlord and Tenant shall each pay the fees and expenses of the appraiser appointed by it and each shall pay one-half of the fees and expenses of the third appraiser, if applicable.

22. Default By Tenant and Remedies.

(a) Event of Default. In the event Tenant shall fail to keep or violates any condition or agreement in this Lease on the part of the Tenant to be performed and if such failure or violation shall have continued for a period of 30 days after written notice of default from Landlord to Tenant specifying the event of default, then, except as hereinafter specified, Tenant shall be deemed to be in default hereunder, and Landlord shall in addition to and not in lieu of all of the rights to which it may be entitled to hereunder and by applicable Laws, at its option without election, be entitled to any one or more of the following remedies subject to the rights of any Leasehold Lender pursuant to Section 14: (i) cure such default and be reimbursed for all costs and expenses incurred with respect thereto, together with interest at the "Prime Rate" as published from time to time by the Wall Street Journal from the date such costs and expenses are paid by Landlord until repaid to Landlord promptly upon written demand from the Landlord to the Tenant; (ii) seek monetary damages from Tenant and/or injunctive or other equitable relief; (iii) terminate this Lease and re-enter and repossess all and singular the Premises together with all improvements thereon, or (iv) Landlord may re-enter and take possession of the Premises, without terminating this Lease, and remove all persons and property (other than tenants in the Building and their respective property) therefrom, without being deemed guilty of any manner of trespass. This Lease may be terminated only by written notice from Landlord to Tenant specifically stating that Landlord is terminating this Lease. In the event Landlord elects to re-enter the Premises, Landlord may, but shall not be obligated to, make such alterations and repairs as may be necessary to relet the Premises; provided that Landlord shall endeavor to relet the Premises for the remainder of the then-current term of this Lease to reduce the liability of Tenant to Landlord as otherwise specified herein. Any such reletting (which may extend beyond the term hereof) may be at such rental and upon such other terms and conditions as Landlord, in its sole discretion, deems advisable. Upon each such reletting, all rents and other sums received by Landlord shall be applied, first, to the payment of all indebtedness other than rent due hereunder from Tenant to Landlord, second, to the payment of any costs and expenses of such reletting including reasonable real estate brokerage fees and attorneys' fees and of costs of alterations and repairs to the Premises, third, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future rent and other obligations owing by Tenant hereunder as the same may become due and payable hereunder. If such rentals and other sums received from such

reletting are less than the sums to be paid by Tenant hereunder, Tenant shall pay such deficiency to Landlord; if such rentals and sums shall be more, Tenant shall have no right to the excess. Notwithstanding any such re-entry by Landlord, Landlord may at any time hereafter elect to terminate this Lease for such previous material default by Tenant on written notice to Tenant.

(b) Credit for Value of Building. Notwithstanding anything to the contrary contained herein notwithstanding, in the event Tenant defaults under the terms of this Lease and Landlord exercises its remedy to terminate the Lease, Tenant shall receive a credit toward sums which it would otherwise owe to Landlord hereunder for the positive difference, if any, between the fair market value of any improvements which may revert to Landlord upon termination of this Lease and the Residual Interest.

(c) Rights are Cumulative. All rights and remedies of Landlord under this Lease shall be cumulative of all rights and remedies otherwise available to Landlord at law or in equity, and none shall exclude any other right or remedy. Such rights and remedies may be exercised and enforced concurrently and whenever and as often as occasion therefor arises.

(d) No Default or Abatement of Tenant's Obligations. Irrespective of the foregoing, in the event any non-monetary default is not cured within such 30-day period, the default shall nevertheless be deemed cured if within such thirty-day period the Tenant commences curative action and continues the same with reasonable diligence. Neither the exercise by Landlord of any or all of its rights under this Lease or law nor the defaults by Tenant of any of Tenant's obligations to Landlord shall in any way relieve Tenant of Tenant's obligation to any Leasehold Lender or any other third party to whom Tenant may be obligated and shall in no event impose on Landlord any obligations to any Leasehold Lender or other party to whom Tenant may be or may have been obligated.

23. **Default By Landlord.** If Landlord shall fail to pay, within a reasonable time after due date, any obligation paramount to this Lease or affecting the Premises or shall fail promptly to remove any other lien or charge which could jeopardize the Tenant's right to possession as hereby granted, Tenant may pay the items in question after first giving Landlord 30 days' written notice. Any such payment shall entitle Tenant to be subrogated to the lien or charge of the item so paid. Landlord shall have an opportunity to contest the validity of any obligation paramount to this Lease or affecting the Premises by making payment of the item under protest or posting an appropriate bond. If any payment is made by Tenant pursuant to this Section, Landlord shall be liable for payment to Tenant in accordance with this Section.

24. **Termination.** Upon termination of this Lease either by default of Tenant or expiration of the term, the improvements on the Premises will be and become the property of the Landlord.

25. **Right of First Refusal.**

(a) Cash Offer. In the event that Tenant desires to assign or otherwise transfer the Leasehold Interest or any portion thereof, Landlord shall have a first refusal option to purchase the Leasehold Interest upon the same terms and conditions as Tenant, or its successors and assigns, shall propose to sell the Leasehold Interest, or shall have received an offer from a third party to purchase the Leasehold Interest, which Tenant intends to accept (or has accepted subject to Landlord's right of first refusal granted herein). If, during the Term, Tenant receives such an offer or reaches such agreement with a third party or proposes to offer the Leasehold Interest for sale, Tenant shall promptly provide written notice (the "Sale Notice") to Landlord of the purchase price for the Leasehold Interest, together with all other material terms and conditions of such agreement or proposed sale, including a copy of such offer. Landlord shall have 30 days after the Sale Notice within which time to exercise Landlord's option to purchase. In the event that Landlord exercises its option, the closing of the purchase shall take place as mutually agreed to by the parties but in no event later than 60 days after Landlord has provided Tenant with written notice of the election to purchase by Landlord. In the event that Landlord does not exercise such option to purchase within the sixty-day period after the Sale Notice, Tenant shall be free for a period of one year after the expiration of such sixty-day period to sell the Leasehold Interest to the third party for a sales price and on no less favorable terms than set forth in the Sale Notice. In the event Tenant does not consummate a sale of the Leasehold Interest within such one-year time period, the procedures set forth above shall be repeated in the event Tenant desires to continue to seek a sale of the Leasehold Interest.

(b) Noncash Transaction. If Tenant desires to make a charitable contribution or engage in a conveyance of any other nature wherein cash or cash equivalent consideration is not being received, any offer made under this Section shall be based on the fair market value of the Leasehold Interest. The parties shall attempt to agree as to the fair market value of the Leasehold Interest, but if agreement cannot promptly be reached, the fair market value shall be established for the Leasehold Interest by appraisal utilizing the procedures as specified in Section 21 hereof for determining the fair market value of the Residual Interest in connection with a Condemnation. Once the fair market value of the Leasehold Interest has been established, Tenant shall be entitled to give the notice of the proposed assignment or conveyance to Landlord as set forth above utilizing the fair market value of the Leasehold Interest as the proposed consideration. In the event Landlord elects to purchase the Leasehold Interest for its fair market value, the transaction shall be closed within 150 days of the determination of the fair market value of the Leasehold interest as an all-cash transaction as provided above with the Leasehold Interest conveyed to Landlord free and clear of all Leasehold Mortgages and any other liens or security interests.

26. Adjacent Areas. Landlord shall not construct any improvements within the Development Buffer without providing prior written notice to Tenant of its intent to do so; provided that no improvement shall be configured or constructed in a manner so as to diminish the value of the Building. Any such improvements constructed by Landlord shall be designed, constructed and maintained in a manner consistent with all other buildings and improvements located on the Hospital campus. Tenant hereby expressly consents to the construction of surface parking areas adjacent to the Premises. Landlord shall not alter the sidewalk or roadway systems in the Development Buffer

if such alteration materially and adversely affects Tenant's access to the Premises without the prior written consent of Tenant. Landlord shall keep all areas within the Development Buffer in reasonable condition and repair, with appropriate landscaping to provide visually attractive surroundings to the Premises.

27. **Notices.** Any notice, demand, approval or other communication provided for in this Lease 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 Landlord:

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
Telephone: (205) 458-9492
Telecopy: (205) 458-9500

If to Tenant:

SHELBY MOB III, LLC
% 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) 930-5301

Addresses for notice may be changed from time to time by written notice to all other parties. Any communication given by mail will be effective (i) 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.

28. **Successors and Assigns.** The covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of the Landlord and Tenant and their respective successors, legal representatives and assigns; provided that, subject to Section 14(k) hereof, Tenant shall not assign or otherwise transfer its interests herein without prior written consent of Landlord. Upon a transfer by Landlord or Tenant of its respective estate or interest in the Premises or the Building, such transferring party (the "Transferring Party") shall notify the other party in writing of such transfer. The Transferring Party shall be and is hereby relieved from any breach of covenants or obligations under this Lease arising or occurring after the date of transfer of the Transferring Party's estate or interest in the Premises or the Building, but only if the transferee of such estate or interest shall have assumed and agreed to carry out all covenants and obligations of the Transferring Party under this Lease during such time as said transferee shall own or hold the Transferring Party's estate or interest in the Premises or the Building. The provisions of this Section shall apply to each successive transfer of Landlord or Tenant's interest or estate.

29. **Disputes.** Notwithstanding anything to the contrary contained herein, if any bona fide dispute arises concerning the performance by Tenant (or any other party on behalf of the Tenant) of the obligations imposed upon Tenant under the terms of this Lease, the Tenant or any other party having an interest in this Lease, including the Leasehold Lender, shall be entitled to have such dispute resolved by a court of competent jurisdiction. During the pendency of any such court proceeding, the grace periods otherwise specified herein for curing defaults shall be tolled if an appropriate bond acceptable to the Landlord is posted with the court to assure reasonable performance of the Tenant's obligation if the matter is resolved in favor of the Landlord; provided further that such tolling provision shall be applicable only to non-monetary defaults and shall not toll any grace period otherwise specified herein with respect to the payment of monetary defaults, which (unless otherwise ordered by a court of competent jurisdiction) shall be paid under protest in the event Tenant or any other party with an interest in this Lease disputes the propriety of any such payment. In the event any litigation is commenced with respect to any matter set forth in this Lease,

the prevailing party shall be entitled to recover reasonable attorneys' fees and all other reasonable direct costs associated with such litigation from the nonprevailing party.

30. **Compliance with Laws.** Tenant shall conform to and observe all Laws of the United States of America, State of Alabama, County of Shelby and City of Pelham, and all public authorities, boards or offices, relating to the Premises or the improvements thereon or the use thereof and will not during such term permit the Premises to be used for any illegal or immoral purpose, business or occupation; provided that nothing herein contained shall be construed as preventing or interfering with the contestation by Tenant, at its own expense, of any such Laws that it may consider unlawful or oppressive, and Tenant shall not be considered in default with respect to such contested matter so long as Tenant is contesting same in good faith and the matter remains undetermined by final judgment.

31. **No Waiver.** No waiver of any condition or covenant in this Lease, or of any breach thereof, shall be taken to constitute a waiver of any subsequent breach. No payment by Landlord, in case of default on the part of Tenant in that respect, of any taxes, assessments, public charges, or premiums of insurance, or the payment of any amount herein provided to be paid other than rents, or in the procuring of insurance as above provided, shall constitute or be construed as a waiver or covenant by Landlord of the default of Tenant in that respect.

32. **Consents.** In each instance where either parties' consent or approval is necessary or appropriate pursuant to the terms of this Lease, such consent or approval will not be unreasonably withheld, conditioned or delayed.

33. **Tax Deductions.** As long as this Lease is in effect, only Tenant shall have the right to take deductions on its tax returns and depreciation expense with respect to such buildings, structures, improvements, changes, alterations, additions, repairs and installations which are located upon the Premises.

34. **Covenants Running with the Land.** All covenants, promises, conditions and obligations herein contained or implied by law are covenants running with the land and shall attach and bind and inure to the benefit of the Landlord and Tenant and their respective heirs, legal representatives, successors and assigns, except as otherwise provided herein.

35. **Signage.** Tenant shall have the right to install at Tenant's expense signs upon the exterior of the Building or on the Premises, subject to any applicable Laws; provided that Tenant shall first obtain the prior written consent of Landlord.

36. **Permitted Use.** Tenant shall use the Premises only for an office building designed for and occupied by physicians' medical offices and parking facilities serving such medical office building, subject to the limitations contained herein. Tenant will use its good faith reasonable efforts not to occupy or use the Premises, or permit any portion of the Premises to be occupied or used, for any business or purpose which is unlawful in any material respect. Tenant will use its good faith

reasonable efforts to comply and cause its employees, officers, directors, shareholders, agents, and invitee to comply in all material respects with all applicable Laws in constructing and operating the Building and the Premises.

37. **Landlord's Right of Entry.** Subject to the rights of the lessees in the Building, Landlord or its representatives shall have the right to enter into and upon any and all parts of the Premises at reasonable times during business hours upon 24 hours' prior notice (written or oral) to Tenant to (i) inspect same, (ii) show the Premises to prospective tenants, purchasers, or lenders, or (iii) make any repairs or maintenance or perform any obligations of Tenant hereunder which Tenant has failed to perform and which Landlord is authorized to perform on behalf of Tenant hereunder; and Tenant shall not be entitled to any abatement or reduction in rent by reason thereof, nor shall such be deemed to be actual or constructive eviction. Landlord shall exercise the right contained herein in such a manner as to not unreasonably interfere with Tenant's use and enjoyment of the Premises. Notwithstanding anything contained herein to the contrary, Landlord shall not be required to notify Tenant under the terms of this Section in the event of a bona fide emergency.

38. **Waiver of Subrogation.** Anything in this Lease to the contrary notwithstanding, the parties hereto hereby waive to the extent permitted by their respective insurance carriers and to the extent of any insurance proceeds received by such parties and any and all rights of recovery, claim, action, or cause of action, against each other, and their respective agents, officers, directors, partners, and employees, for any loss or damage that may occur to the Premises, or any improvements thereto, or personal injury or death of any person by reason of fire, the elements, or other origin, including negligence of the parties hereto, their agents, officers, directors, partners, and employees; provided that nothing contained herein shall reduce, limit or affect the liability of Tenant under the indemnity contained in Section 17.

39. **Holdover.** Should Tenant, or any of Tenant's successors in interest, hold over on the Premises, or any part thereof, after the expiration of the term of this Lease with the permission of Landlord, unless otherwise agreed in writing, such holding over shall constitute and be construed as a tenancy from month-to-month only subject to all the terms and provisions of this Lease (to the extent applicable to a month-to-month tenancy) and shall not be an extension of the term of this Lease. Basic Rent for such month-to-month tenancy shall be one and one-half times the rent payable on the first day of the last full calendar month prior to the expiration or termination of this Lease payable on a per diem basis. The inclusion of this Section shall not be construed as Landlord's consent for Tenant to hold over. Any such month-to-month tenancy may be terminated by either party hereto giving the other 20 days' prior written notice of such transfer.

40. **Highest Lawful Rate.** It is the intention of Landlord and Tenant to conform strictly to applicable usury Laws. Accordingly, if the transaction contemplated hereby would be usurious in any respect under applicable Law, then, in that event, notwithstanding anything contained herein or in any agreement entered into in connection with or as security for this Lease to the contrary, it is agreed that the aggregate of all consideration which constitutes interest under applicable Law that is taken, reserved, contracted for, charged, or received by Landlord under this Lease or under any of

the aforesaid agreements securing this Lease or otherwise entered into in connection with this Lease shall under no circumstances exceed the maximum amount of interest allowed by applicable Law, and any excess shall be credited on this Lease by the Landlord to any rent or other sum which is not interest under applicable Law owing by Tenant to Landlord hereunder or, at the option of Landlord, refunded to Tenant, and in no event shall any consideration paid by Tenant to Landlord hereunder that constitutes interest ever include more than the maximum amount allowed by applicable Law.

41. **No Partnership or Joint Venture.** Under no circumstances shall Landlord and Tenant be deemed or held to be partners or joint venturers in or concerning the Building to be developed, constructed, and operated under this Lease.

42. **Waiver of Trial by Jury.** THE PARTIES TO THIS LEASE DESIRE TO AVOID THE ADDITIONAL TIME AND EXPENSE RELATED TO A JURY TRIAL OF ANY DISPUTES ARISING HEREUNDER. THEREFORE, IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO, AND FOR THEIR SUCCESSORS AND ASSIGNS, THAT THEY WILL AND HEREBY DO WAIVE TRIAL BY JURY OF ANY CLAIM, COUNTERCLAIM, OR THIRD-PARTY CLAIM, INCLUDING ANY AND ALL CLAIMS OF INJURY OR DAMAGES, BROUGHT BY EITHER PARTY AGAINST THE OTHER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE AND THE RELATIONSHIP WHICH ARISES HEREFROM. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS WAIVER IS KNOWINGLY, FREELY AND VOLUNTARILY GIVEN, IS DESIRED BY ALL PARTIES, AND IS IN THE BEST INTEREST OF ALL PARTIES.

43. **Memorandum of Lease.** Landlord and Tenant shall enter into a short form memorandum of this Lease in form suitable for recording under the Laws of the state in which the Premises is located in which reference shall be made to this Lease and all options contained herein, together with any other information required by applicable Laws. Tenant shall bear the fees and taxes in connection with the recording of the short form memorandum of Lease.

44. **Miscellaneous.** This Lease shall be interpreted according to the Laws of the State of Alabama. Any covenant, term, or provision of this Lease which calls for any action or imposes any liability or obligation after the expiration or termination of this Lease shall survive the expiration or termination of this Lease. This Lease 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 Lease shall not be modified or amended except by mutual written agreement. The waiver by either party of a breach or violation of any provisions of this Lease shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision. In the event any provision of this Lease is held to be unenforceable or invalid for any reason, this Lease 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 Lease 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 Lease. This Lease 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. The parties acknowledge that this Lease was initially prepared by the Tenant solely as a convenience and that all parties hereto, and their counsel, have read and fully negotiated all of the language used in this Lease and that, because all parties and their counsel participated in negotiating and drafting this Lease, no rule of construction shall apply to this Lease which construes ambiguous and unclear language in favor of or against any party because such party drafted this Lease. With respect to all provisions of this Lease, 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) are 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.

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IN WITNESS WHEREOF, the parties hereto have set their hands and seals this day and year first above written.

"Landlord:"

BAPTIST HEALTH SYSTEM, INC.

By: Charles C. Colbert

Name: Charles C. Colbert

Title: Pres. SBHC

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. Colbert, 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

"Tenant:"

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 A. Davis
NOTARY PUBLIC

My Commission Expires: Jan 31, 2012

EXHIBIT "A"

Description of Premises

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 "B"

List of Preliminary Plans and Specifications

DRAWING INDEX

Medical Office Building

Shelby Baptist Medical Center

Alabaster, Alabama

ETA Job Number 2843

Evan Terry Associates has listed all drawings, as well as who prepared them, and the date of printing. The list is as follows:

COVER SHEET

SITE (EVAN TERRY ASSOCIATES, P.C.)

S2.10 Site Plan

STRUCTURAL (MBA STRUCTURAL ENGINEERS, INC.)

ST1.10 General Notes and Typical Details
ST2.10 Foundation and First Floor Plan
ST2.11 Second Floor Framing Plan
ST2.12 Third Floor Framing Plan
ST2.13 Fourth Floor Framing Plan
ST2.14 Roof Framing Plan
ST3.10 Schedules and Typical Details
ST5.10 Sections
ST5.11 Sections
ST5.12 Sections and Details

ARCHITECTURAL (EVAN TERRY ASSOCIATES, P.C.)

A1.10 Life Safety Code Review and Partition Details
A2.11 First Floor Plan
A2.12 Second Floor Plan
A2.13 Third Floor Plan
A2.14 Fourth Floor Plan
A2.15 Roof Plan
A2.40 First Floor Reflective Ceiling Plan

A2.41 Second Floor Reflective Ceiling Plan
A2.42 Third Floor Reflective Ceiling Plan
A2.43 Fourth Floor Reflective Ceiling Plan
A3.10 Door and Finish Schedules
A4.10 Enlarged Plans and Toilet Elevations
A5.10 Exterior Elevations
A5.11 Exterior Elevations
A5.20 Building Sections
A5.21 Building Sections
A6.10 Wall Sections
A6.11 Wall Sections
A6.12 Wall Sections
A6.13 Wall Sections
A7.10 Stair Sections and Details
A7.11 Elevator Sections and Details

PLUMBING (MILLER & WEAVER, INC.)

P1.1 Plumbing Legend, Schedule, Notes, Details, and Riser Diagrams

P2.1 First Floor Plumbing Plan
P2.2 Second Floor Plumbing Plan
P2.3 Third Floor Plumbing Plan
P2.4 Fourth Floor Plumbing Plan
P2.5 Roof Plumbing Plan

MECHANICAL (MILLER & WEAVER, INC.)

M1.0 Equipment Schedule
M2.1 First Floor HVAC Plan
M2.2 Second Floor HVAC Plan
M2.3 Third Floor HVAC Plan
M2.4 Fourth Floor HVAC Plan

M2.5 Roof Plan
M3.1 Details
M3.2 Controls

ELECTRICAL (RAY ENGINEERING GROUP, INC.)

E1.1 Electrical Legend, Schedule, and Notes
E1.2 Electrical Site Plan
E2.1 Electrical Single Line Diagram
E3.1 First Floor Plan Lighting
E3.2 First Floor Plan Power and Auxiliary
E4.1 Second Floor Plan Lighting
E4.2 Second Floor Plan Power and Auxiliary
E5.1 Third Floor Plan Lighting
E5.2 Third Floor Plan Power and Auxiliary
E6.1 Fourth Floor Plan Lighting
E6.2 Fourth Floor Plan Power and Auxiliary
E7.0 Electrical Roof Plan

These construction drawings were last printed on October 15, 2001.