


STATE OF ALABAMA)
COUNTY OF SHELBY)


20150218000051520 1/7 \$32.00
Shelby Cnty Judge of Probate, AL
02/18/2015 10:39:47 AM FILED/CERT

FIRST AMENDMENT TO GROUND LEASE

This First Amendment to Ground Lease (this "First Amendment") is made effective as of September 1, 2011 (the "Effective Date") by and between **BAPTIST HEALTH SYSTEM, INC. dba SHELBY BAPTIST MEDICAL CENTER**, an Alabama non-profit corporation (and successor in interest to Shelby County Health Care Authority dba Shelby Medical Center)("Lessor"), and **SMCMOB II, L.L.C.**, an Alabama limited liability company ("Lessee").

RECITALS

A. Pursuant to that certain Ground Lease dated as of April 29, 1998 by and between Lessor and Lessee which is recorded as Instrument #1998-15829 in the Office of the Judge of Probate of Shelby County, Alabama (the "Original Lease"), Lessor leased to Lessee, and Lessee leased from Lessor, the real property more fully described therein ("Demised Premises").

B. Lessee has heretofore constructed a medical office building and an addition to the medical office building on the Demised Premises (collectively, the "Building").

C. The initial term of the Original Lease expires on April 28, 2040 ("Initial Term"), and Lessee has the option to renew the Initial Term for an additional ten (10) year period ending April 28, 2050 ("Extended Term").

D. Lessor and Lessee desire to amend the Original Lease (i) to add certain use restrictions applicable to tenants of the Building, (ii) to provide Lessee with options to extend the Extended Term through April 28, 2075, and (iii) to provide Lessor with a right of first refusal to lease available space in the Building.

E. The Original Lease and this First Amendment are hereinafter collectively referred to as the "Lease." Capitalized terms used herein and not otherwise defined herein shall have the meaning given to such terms in the Lease.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. Extended Term. As of the Effective Date, the first paragraph on page 2 of the Original Lease (the paragraph immediately following the paragraph on page 1 beginning with "TO HAVE AND TO HOLD") is deleted, and the following is substituted in lieu thereof:

"Lessee shall have the option to extend the term of this Lease for the following periods (individually and collectively, the "Extended Term") exercisable by written

notice to Lessor given as follows: (a) for a ten (10) year period ending April 28, 2050 with written notice to Lessor on or before July 1, 2039; (b) if the first option to extend was exercised, for a second ten (10) year period ending April 28, 2060 with written notice to Lessor on or before July 1, 2049; (c) if the second option to extend was exercised, for a third ten (10) year period ending April 28, 2070 with written notice to Lessor on or before July 1, 2059; and (d) if the third option to extend was exercised, for a fourth period of five (5) years ending April 28, 2075 with written notice to Lessor on or before July 1, 2069. Except for the "Basic Rent" (as such term is defined in paragraph 2 of this Lease), the terms of this Lease shall remain unchanged for the Extended Term. Basic Rent for the Extended Term shall be an amount per annum equal to 7.686% of the fair market value of the Demised Premises (exclusive of the Facility and other improvements thereof) as of April 29, 2040, and, if an option to extend is exercised by Lessee, on the first day of each Extended Term thereafter, established by agreement of the parties or by arbitration in accordance with the provisions and procedures set forth in clauses (c)(i) through (c)(vii) of paragraph 15 of this Lease. Basic Rent for the Extended Term shall be payable in equal monthly installments in advance on the first day of each month during the Extended Term."

2. Use Restrictions. As of the Effective Date, subparagraphs 5(c), 5(d), 5 (e), and the last paragraph of Section 5 of the Lease are hereby deleted, and the following new subparagraphs 5(c) through 5(i) are substituted in lieu thereof:

"(c) The Facility shall be used for the private practice of medicine by Qualified Medical Providers and related medical and/or healthcare services. "Qualified Medical Providers" shall mean all persons or entities providing physician services in the Demised Premises that are physicians that: (i) have an unrestricted and unlimited license to practice medicine in the State of Alabama; (ii) are not, and at no time have been, excluded from participation in any federally-funded health care program, including, without limitation, Medicare or Medicaid; and (iii) have not been convicted of any felony or any crime involving fraud or moral turpitude or any other crime which relates to the physician's ability to properly practice medicine (collectively, "Physicians").

(d) Lessee acknowledges that Lessor offers a variety of services within the campus of Shelby Baptist Medical Center. To avoid the duplication of such services, Lessee shall not offer or permit the offering from the Demised Premises of any of Restricted Services without first obtaining the written approval from Lessor. "Restricted Services" means health care services, other than services performed personally by a Physician, that are at any time provided to inpatients or outpatients of Shelby Baptist Medical Center, unless such services are provided to a Physician's "own patients." The term "own patients," means persons who specifically seek out or are referred for the professional services of a Physician because of the Physician's medical specialty (and not solely because such Physician provides Restricted Services). In the event that there is any disagreement regarding whether services are Restricted Services, or whether a person constitutes a Physician's "own patient", such disagreement shall be resolved by Lessor in its sole discretion and the same shall be binding on all interested parties.



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(e) Lessee agrees, subject to the limitations and qualifications set forth in this Section 5, that Lessee will not offer or permit the offering of the following categories of services from the Facility ("Prohibited Services") other than by Lessor or its affiliates:

- (i) mammography;
- (ii) ultrasound;
- (iii) endoscopy;
- (iv) CT or MRI;
- (v) nuclear medicine;
- (vi) clinical reference laboratory;
- (vii) cardiac cath services;
- (viii) radiation therapy;
- (ix) surgery that requires general anesthesia;
- (x) physical therapy services;
- (xi) sleep studies; or
- (xii) any procedure which, by chemical or mechanical or surgical means, has the primary, intended result of terminating a fetal or embryonic pregnancy or causing a miscarriage.

(f) Notwithstanding the foregoing, the addition of the Restricted Services and the Prohibited Services to the use restrictions contained in the Lease as of the Effective Date shall not prohibit the continued use by an existing sublessee or occupant of space in the Facility for such Restricted Services or Prohibited Services during the remainder of the term of the sublease or occupancy agreement, including any extension or renewal thereof.

(g) Notwithstanding any provision contained in the Lease to the contrary, without Lessor's prior written consent, the Facility shall not at any time be owned, managed (as in the context of providing property management services), leased (as in the context of procuring sublessees to occupy space in the Facility), or operated by a person or entity, or any affiliate thereof (but excluding Lessor or an affiliate of Lessor, their respective successors and assigns) that owns, operates or manages an acute care hospital, or that controls, is controlled by or is under common control with a person or entity that owns, operates or manages an acute care hospital within the Birmingham-Hoover Metropolitan Statistical Area. The foregoing restriction shall not apply to an institutional purchaser of medical office buildings that owns an acute care hospital but does not manager or operate an acute care hospital.

(h) In the event Lessor, or an affiliated entity or purchaser of Lessor, their respective successors and assigns, is no longer operating a hospital on the Shelby Baptist Medical Center campus, then the foregoing restrictions shall no longer apply and the Facility may be used for any lawful office use. Lessor, or an affiliated entity or purchaser of Lessor (i) shall not be deemed to be “no longer operating a hospital on the Shelby Baptist Medical Center campus” if use of an existing hospital by such party or parties has been interrupted because of damage or destruction by fire or any other casualty and such hospital is being repaired or reconstructed by Lessor with reasonable diligence; and (ii) operating such a hospital shall be entitled to one (1) go-dark period of time, not to exceed one (1) year, every ten (10) years exclusively for redevelopment purposes.

(i) All subleases by Lessee of space in the Facility shall be subject to the prior written approval of Lessor, which approval may be withheld by Lessor in its sole discretion, irrespective of whether any proposed sublease would involve a Restricted Use or a Prohibited Use, under the terms of subparagraphs (a) through (g) of this Section 5 (the “Use Restrictions”); provided, however, that if Lessor refuses to give its approval of a proposed sublease (a “Rejected Sublease”) that would not involve a violation of a Use Restriction, Lessor shall agree, at the option of Lessee, to sublease such space upon the applicable terms provided for in the Rejected Sublease.”

3. Right of First Refusal to Lease. As of the Effective Date, the following paragraph is added to the Lease as subparagraph 11(h):

“(h) Lessee shall not enter into any new sublease or license, or any new option for a sublease or license, for any space in the Facility with any person without first offering such space to Lessor. Renewal of an existing sublease or an existing offer to sublease will not be considered a new sublease. Lessee shall give Lessor written notice of Lessee’s intention to enter into any such agreement with such person setting forth the name and address of the person and the basic terms of the proposed agreement. Lessor shall have the right to lease or occupy the space on the same terms set forth in such notice. Lessor shall exercise such right within ten (10) days after receipt of Lessee’s notice by delivery of written notice to Lessee. If Lessor fails to exercise such right, Lessee may enter into the proposed agreement with the person at any time within the period commencing on the final day of Lessor’s ten (10) day exercise period and ending one hundred eighty (180) days later. If Lessee and such person fail to enter into the proposed agreement before the end of such one hundred eighty (180) day period, then Lessee’s right to enter into the proposed agreement, or any other such agreement for the same space or any portion thereof, shall be subject to the right of first refusal set forth in this subparagraph 11(h).”

4. Notices. As of the Effective Date, subparagraph 21(a) of the Lease is deleted, and the following new subparagraph 21(a) is substituted in lieu thereof:

“(a) Except as otherwise provided hereunder, any notice or communication from one party to the other may be delivered by (i) hand delivery, (ii) certified United States mail, return receipt requested, postage prepaid, or (iii) reputable overnight courier,

such as Federal Express or Airborne Express. Notices or communications shall be addressed to the parties as follows:

If to Lessor: Baptist Health System, Inc.
d/b/a Shelby Baptist Medical Center
1000 First Street North
Alabaster, Alabama 35007
Attention: President
Telephone: (205) 620-8100

With a copy to: Baptist Health System, Inc.
3201 4th Avenue South
Birmingham, Alabama 35222
Attention: CFO
Telephone: (205) 715-5313

If to Lessee: SMC MOB II, L.L.C.
c/o Johnson Development, LLC
2204 Lakeshore Drive, Suite 215
Birmingham, Alabama 35209
Attention: Manager
Telephone: (205) 802-2300

5. No Further Amendments. Except as expressly amended by this First Amendment, the Lease shall remain in full force and effect and unchanged. This First Amendment may be executed in any number of counterparts, all of which together shall constitute one and the same instrument.

[SIGNATURES ON FOLLOWING PAGE]



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IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed on the dates set forth in the acknowledgments but to be effective as of the Effective Date.

LESSOR:

BAPTIST HEALTH SYSTEM, INC. d/b/a
SHELBY BAPTIST MEDICAL CENTER

By: David C. Wilson

Printed: David C. Wilson

Title: President

LESSEE:

SMCMOB II, L.L.C.

By: James Milton Johnson

Printed: James Milton Johnson

Title: Mgr member



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STATE OF ALABAMA)
COUNTY OF SHELBY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that David C Wilson, whose name as President of BAPTIST HEALTH SYSTEM, INC. d/b/a SHELBY BAPTIST MEDICAL CENTER, an Alabama non-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 9th day of August, 2011.

[Affix Seal]

Donna G Smelcer
NOTARY PUBLIC
Name: Donna G Smelcer
My Commission Expires: 3-17-14

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that James M. Johnson, whose name as Mgr. Member of SMC MOB II, L.L.C., an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such approved 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 11th day of August, 2011.

[Affix Seal]

Rebecca S. Cusmano
NOTARY PUBLIC
Name: Rebecca S. Cusmano

My Commission Expires: 10/28/12

This instrument prepared by and upon recording return to:
M. Beth O'Neill
Maynard, Cooper & Gale, P.C.
1901 Sixth Avenue North, Suite 2400
Birmingham, AL 35203-2618
Telephone: (205) 254-1000


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