


STATE OF ALABAMA)
COUNTY OF SHELBY)


20150218000051550 1/6 \$29.00
Shelby Cnty Judge of Probate, AL
02/18/2015 10:54:58 AM FILED/CERT

THIRD AMENDMENT TO GROUND LEASE

This Third Amendment to Ground Lease (this "Third Amendment") is made as of September ~~28~~, 2010 (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, L.L.C.**, an Alabama limited liability company ("Lessee").

RECITALS

A. Pursuant to that certain Ground Lease dated as of January 1, 1994 by and between Lessor and Lessee which is recorded as Instrument #1994-11311 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 Original Lease, and the description of the Demised Premises contained therein, was amended by that certain Ground Lease Amendment dated as of May 25, 1999 which is recorded as Instrument #1999-22913 in said Probate Office (the "First Amendment"), and by that certain Second Amendment to Ground Lease dated as of April 30, 2001 which is recorded as Instrument #2001-24608 (the "Second Amendment").

D. The initial term of the Original Lease, as amended by the First Amendment and the Second Amendment, expires on December 30, 2035 ("Initial Term"), and Lessee has the option to renew the Initial Term for an additional ten (10) year period ending December 30, 2045 ("Extended Term").

E. Lessor and Lessee desire to further amend the Original Lease, as amended by the First Amendment and the Second Amendment, (i) to add certain use restrictions applicable to tenants of the Building, (ii) to provide Lessee with options to extend the Extended Term through December 31, 2070, and (iii) to provide Lessor with a right of first refusal to lease available space in the Building.

F. The Original Lease, as amended by the First Amendment, the Second Amendment and this Third 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.



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AGREEMENT

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

1. Use Restrictions. As of the Effective Date, the following use restrictions shall be added to paragraph 5 of the Lease:

“(c) The Building 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.

(e) Lessee agrees, subject to the limitations and qualifications set forth in this paragraph 5, that Lessee will not offer or permit the offering of the following categories of services from the Building (“Prohibited Services”):

- (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 Building 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 Building 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 Building), 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 Building 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.

2. Extended Term. As of the Effective Date, the last paragraph on page 1 of the Original Lease 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 (the “Extended Term”) exercisable by written notice to Lessor given as follows: (a) for a ten (10) year period ending December 30, 2045 with written notice to Lessor on or before July 1, 2034; (b) if the first option to extend was exercised, for a second ten (10) year period ending December 30, 2055 with written notice to Lessor on or before July 1, 2044; (c) if the second option to extend was exercised, for a third ten (10) year period ending December 30, 2065 with written notice to Lessor on or before July 1, 2054; and (d) if the third option to extend was exercised, for a fourth period of five (5) years ending December 30, 2070 with written notice to Lessor on or before July 1, 2064. 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 7.25% of the fair market value of the Demised Premises as of December 30, 2035, and at the end of each Extended Term thereafter, exclusive of the Building and other improvements thereon, 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.”

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

“(h) Lessee shall not enter into any new sublease, or any new option for a sublease, for any space in the Building 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 sublease 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 sublease before the end of such one hundred eighty (180) day period, then Lessee’s right to enter into the proposed sublease, or any other sublease for the same space or any portion thereof, shall be subject to the right of first refusal set forth in this paragraph 11(h).”

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

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to be executed as of the Effective Date.

LESSOR:

BAPTIST HEALTH SYSTEM, INC. dba
SHELBY BAPTIST MEDICAL CENTER

By: *David C. Wilson*
Printed: David C. Wilson
Title: President

LESSEE:

SMCMOB, L.L.C.

By: *James G. How Johnson*
Printed: James G. How Johnson
Title: President



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STATE OF ALABAMA)
COUNTY OF ~~JEFFERSON~~)
 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. dba 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 28 day of September, 2010.

[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 Milton Johnson, whose name as President of SMCMOB, 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 officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.


Given under my hand and official seal, this 28th day of September, 2010.

[Affix Seal]

Mary Beth O'Neill
NOTARY PUBLIC
Name: Mary Beth O'Neill

My Commission Expires: 7-26-13

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


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