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2001 Park Place North
Suite 700
Birmingham, AL 35203
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STATE HEALTH PLANNING AND
DEVELOPMENT AGENCY

December 21, 2022

James F. Henry
Partner
jfm.henry@phelps.com
Direct 205 716 5257

Via Electronic Filing

Honorable Emily Marsal
Executive Director
State Health Planning and Development Agency
100 North Union Street, Suite 870
Montgomery, AL 36104
Shpda.online@shpda.alabama.gov

Re: Request for Reviewability Determination
Urology Associates of Mobile: Purchase of Linear Accelerator

Dear Ms. Marsal,

Our firm represents Urology Associates of Mobile ("UAM"), which is a multi-location private physician practice that provides urology and urogynecology services. This letter is to request a determination that UAM's intended purchase of a linear accelerator is exempt from Certificate of Need ("CON") review under the State Health Planning and Development Agency ("SHPDA") rules and regulations.

UAM currently offers physician services from its 7 Alabama offices in Mobile, Fairhope, Foley, Grove Hill, and Thomasville, Alabama and its office in Lucedale, Mississippi. UAMs's current suite of services includes, but is not limited to, the diagnosis and treatment for various types of cancers, including adrenal, bladder, kidney, prostate, and testicular. UAM intends to purchase the linear accelerator as part of its acquisition of substantially all of the assets of Spring Hill Cancer Clinic, LLC ("SHCC"). SHCC, which is owned by Dr. Kenneth E. Ellingwood, owns the linear accelerator and holds the lease to the site where the equipment is located, which is 3719 Dauphin Street, Suite 100, Mobile, Alabama 36608. Dr. Ellingwood is a radiation therapy oncologist who is certified by the American College of Therapeutic Oncology/Radiation Oncology and the American Board of Radiology. He is also a past President of the American Society of Radiation Oncology. Following UAM's acquisition of the assets of SHCC, the linear accelerator will remain in its current location under an assumption of SHCC's current lease, and will be used exclusively by UAM's physicians to treat their patients who have various cancers. This is a continuation of an existing use of the linear accelerator which, upon information and belief, was approved under a letter of non-reviewability issued a number of years ago. The primary service area will be Mobile County, Alabama.

UAM submits that its linear accelerator purchase will satisfy the four part test for application of the Physician Office Exemption ("POE") from CON review that was set forth by the Supreme Court of Alabama in Ex parte Sacred Heart Health Systems, Inc., 155 So. 3d 980, 988 (Ala. 2012).

1) The linear accelerator will be used exclusively by the physicians identified as owners or employees of UAM for the care of their patients.

Honorable Emily Marsal
Executive Director
December 21, 2022
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2) The proposed services will be provided, and the related equipment used, at an office of UAM's physicians. Specifically, the services will be provided and the linear accelerator will be used at UAM's new office at 3719 Dauphin Street, Suite 100, Mobile, Alabama 36608, pursuant to an assumption of SHCC's current lease for the location.

3) All patient billings related to such services are through, or expressly on behalf of, the physicians' practice. UAM will perform all billing for services related to the linear accelerator.

4) The linear accelerator will not be used for inpatient care, nor by, through, or on behalf of a health care facility. The facility will not be leased to or licensed to any person or entity other than the physician owners or employees of UAM.

The financial scope of the project will not exceed the current CON review spending thresholds of \$3,165,569 for major medical equipment or \$1,266,226 for new annual operating costs. The total cost of the project will be as follows:

Equipment Cost: \$400,000.00

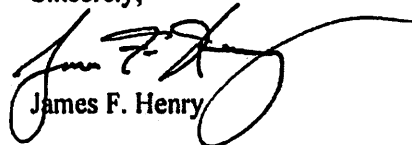
Construction Cost: \$0

Expected 1st year annual operating cost: \$541,917.46

Based on the above information, UAM's proposed project should satisfy the criteria for application of the POE. Accordingly, UAM respectfully requests that SHPDA issue a determination of non-reviewability for the above-described project.

A payment of \$1,000 for the required filing fee is being submitted today via the SHPDA online portal. If you have any questions, please contact me. Thank you for your consideration.

Sincerely,



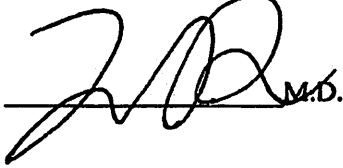
James F. Henry

cc: Mr. Hawk Sindel
Sumpter McGowin, Esq.

Honorable Emily Marsal
Executive Director
December 21, 2022
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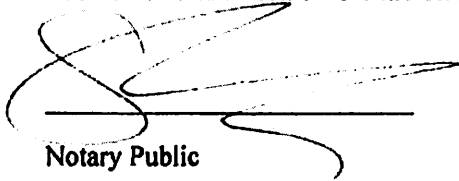
Affirmation of Requesting Party:

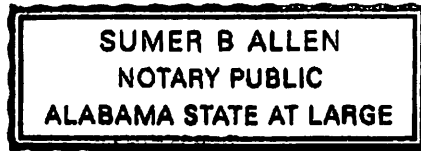
The undersigned, being first duly sworn, hereby makes oath and affirms that he, Zachary Reardon M.D., one of the owners of Urology Associates of Mobile, has knowledge of the facts in this notice and request and, to the best of his knowledge and belief, such facts are true and correct.

 M.D.

Seal

Subscribed and sworn before me on this the 21 day of December, 2022.


Notary Public





Phelps Dunbar LLP
2001 Park Place North
Suite 700
Birmingham, AL 35203
205 716 5200

RV2023-010
RECEIVED
Jan 03 2023
STATE HEALTH PLANNING AND
DEVELOPMENT AGENCY

December 30, 2022

Via Electronic Filing

Honorable Emily Marsal
Executive Director
State Health Planning and
Development Agency
100 North Union Street, Suite 870
Montgomery, AL 36104
Shpda.online@shpda.alabama.gov

Jim F. Henry
Partner
jim.henry@phelps.com
Direct 205 716 5257

Re: RV2023-010; Urology Associates of Mobile

Dear Mrs. Marsal,

We received your letter dated December 28, 2022 (the "Request for Information") responding to the Reviewability Determination Request submitted on behalf of Urology Associates of Mobile, PA ("UAM") on December 21, 2022. This letter, and the enclosed materials, is submitted in response to the Request for Information.

1. **The Request for Information asked that we provide information as to the full gamut of services offered at the existing multi-location private physician practice (UAM) and a listing of any new services the proposed linear accelerator will provide to the patients of UAM.**

UAM consists of 19 physicians and 10 advanced practice providers providing services in the fields of urology, urogynecology, and urology-oncology.

UAM's urology services include the diagnosis and treatment of adrenal cancer, benign prostatic hyperplasia, bladder cancer, erectile dysfunction, hematuria, kidney cancer, kidney stones, prostate cancer, low testosterone, prostatitis, testicular cancer, peyronie's disease, male infertility, testicular/scrotal pain, urinary incontinence, urinary tract infection, and related issues.

UAM's urogynecological services include the diagnosis and treatment of urinary incontinence, overactive bladder, pelvic organ prolapse, fecal incontinence, menopause hormone replacement, vaginal relaxation, interstitial cystitis, urinary tract infection, vaginal mesh complications, painful intercourse, vulvovaginal issues, vaginal atrophy and related issues.

The acquisition of the linear accelerator will allow UAM to offer radiation therapy to its cancer patients, including IMRT, IGRT, SBRT, and 3-D Conformal Radiation Therapy. Radiation therapy is a common treatment for several cancers UAM currently diagnoses, treats, and manages and so we hesitate to describe this added capability as a "new service" as that term implies an expansion into practice areas unrelated to UAM's historic

core competency. Rather, the linear accelerator is a logical addition to the treatment options UAM is able to offer its sizeable cancer patient population. Further, radiation therapy is a current service offering of Springhill Cancer Clinic, LLC ("**SHCC**"). The linear accelerator will have the capability to treat UAM patients with certain non-urologic cancers as well.

2. The inaccuracy in the Determination Request regarding the current CON expenditure thresholds is noted. We appreciate the clarification and regret any confusion.
3. **The Request for Information asked that we provide information concerning the terms of the current lease that UAM plans to assume as part of its acquisition of the assets of Springhill Cancer Clinic, LLC.**

As part of the acquisition of SHCC assets, UAM will assume SHCC's existing lease of office space located at 3719 Dauphin Street, Suite 100 in Mobile, Alabama, where the linear accelerator is currently located. The lease is between SHCC and Springhill Medical Complex, LLC dated October 10, 2008 (as renewed/amended on January 16, 2017, the "Lease") and has a term expiring March 31, 2027. A copy of the Lease is attached hereto and made a part hereof as "Exhibit A".

The Lease is a conventional medical office space lease on market terms with monthly rent fixed in advance payable to the landlord. UAM plans to assume the Lease a part of its acquisition of SHCC assets in order to seamlessly continue the operation of SHCC's practice as currently conducted, only as a location of UAM.

4. **The Request for Information asked that we disclose any financial interests in UAM, the entity requesting the reviewability determination, held by any other healthcare facilities or groups.**

UAM is structured as a common physicians' practice. It is organized as an Alabama Professional Association and is owned 100% by physicians actively practicing medicine and seeing patients on its behalf. No other facility or group has a financial interest in UAM currently or will have a financial interest in UAM as a result of the acquisition of SHCC assets.

The owners of UAM are the following:

Charles F. White, Jr. MD;
S. Harbour Stephens, III MD;
Paul A. Scott, Sr. MD;
Matthew G. McIntyre, MD;
Zachary D. Reardon, MD;
Jason H. Frischhertz, MD;
William E Blaylock, MD;
Thomas W Coleman, MD;
Ted D. Klein, MD;
Robert C. Brown, MD;
David L. Spencer, MD; and
Mark S. Lyell, MD.

UAM's acquisition of SHCC assets will not affect this structure. The transaction is a common, vanilla purchase of one physicians' practice by another. UAM will acquire the

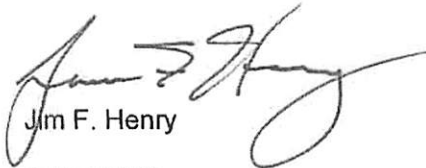
December 30, 2022

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practice assets, lease the office space, employ the physicians and staff, and operate the practice as a UAM location where UAM physicians see and treat UAM patients.

We trust that this additional information is responsive to your questions. If you need anything else, please let us know.

Sincerely,



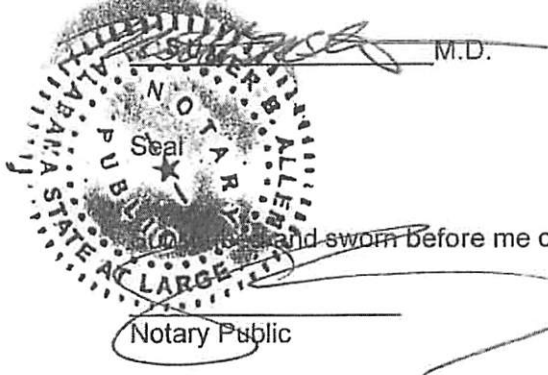
Jim F. Henry

JFH:SMMii:

cc: Mr. Hawk Sindel
Sumpter McGowin, Esq.

Affirmation of Requesting Party:

The undersigned, being first duly sworn, hereby makes oath and affirms that he, Matthew Melnyk M.D., one of the owners of Urology Associates of Mobile, has knowledge of the facts in this notice and request and, to the best of his knowledge and belief, such facts are true and correct.



M.D.

and sworn before me on this the 30 day of December, 2022.

Notary Public

SUMER B ALLEN
NOTARY PUBLIC
ALABAMA STATE AT LARGE

EXHIBIT A

Lease Agreement

between

Springhill Medical Complex, LLC and

Springhill Cancer Clinic, LLC

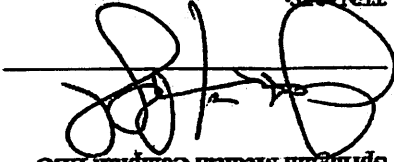
AMENDMENT TO LEASE AGREEMENT


This Amendment to the Lease Agreement is made this 16th day of January, 2017, by and between Springhill Medical Complex, LLC a corporation organized under the laws of the State of Alabama (Landlord) and Springhill Cancer Clinic, LLC of Mobile, Alabama (Tenant).

WITNESSETH:

Whereas, by Lease Agreement executed by the parties on October 10, 2008, (the "Lease"), Landlord did lease certain Premises located in Mobile County, Alabama to Tenant; and NOW, THERRBORF, in consideration of the premises and the mutual covenants contained herein, the Parties do hereby agree as follows:

1. Landlord and Tenant agree to amend the Lease and extend the term through March 31, 2027.
 2. Landlord and Tenant do hereby extend said Lease continuing under the current Lease terms and conditions including Rent payments and increases as previously negotiated through March 31, 2019.
 3. Beginning April 1, 2019, the monthly base rental rate shall be \$12,000 per month. For subsequent years, the rent shall be increased by an annual percentage equal to the percentage of increase reflected in the then most recent CPI published by the Federal Government compared to the same index of the prior year.
 4. Except as expressly set forth in this Amendment, all other terms, conditions and provisions of the Lease shall remain in full force and effect.
- IN WITNESS WHEREOF the parties have caused this Agreement to be executed on the day and date first above written.

LANDLORD:
Springhill Medical Complex, LLC


TENANT:
Springhill Cancer Clinic, LLC


LEASE

THIS LEASE made this 10th day of October, 2008 by and between Springhill Medical Complex, Inc., an Alabama corporation, hereinafter called "Lessor", and Mobile Cancer Center, Inc., hereinafter called "Lessee".

1 - DESCRIPTION AND TERM

WITNESSETH: That the Lessor does hereby demise and let unto the Lessee 5,962 square feet of office space in the Springhill Hospital Professional Building ("Building") located on Dauphin Street and attached to Springhill Memorial Hospital (SMH) in Mobile, Mobile County, Alabama for continuous use and occupancy by the Lessee as an office and for no other different use or purpose, for and during the term of 120 months beginning on the 1st day of April, 2009, and ending on the 31st day of March, 2019.

2 - RENT AND PAYMENT

IN CONSIDERATION WHEREOF, the Lessee promises and agrees to pay the Lessor, or the Lessor's assign or agent at the office of said Lessor or its assign or agent, the "Base Rent" and such "Additional Rents" as are hereinafter described:

A. DEFINITIONS: For use in this paragraph 2 and in other provisions in this Lease the following definitions shall apply:

i. Rental Space: The number of square feet of office space in the Building leased by the Lessee as specifically set out in Paragraph 1 of this Lease.

B. BASE RENT: The Base Rent shall consist of the following:

i. As a fixed minimum rent for the demised premises for the whole term hereof, the Lessee promises and agrees to pay the Lessor, or its agent or assign at the office of said Lessor or its agent or assign, the sum of \$625,980.

In each month during this lease period and any renewals, the rent is due on the first day of the month.

Year 1 - The rent shall be a fixed sum of \$125,196 or \$10,433 per month.

For subsequent years, the rent shall be increased by an annual percentage equal to the percentage of increase reflected in the then most recent consumer price index published by the Federal government compared to the same index of the prior year.

C. ADDITIONAL RENTS:

i. The Lessor shall provide at no charge to the Lessee the following services:

(a) Janitor service and customary cleaning in and about the premises.

(b) Heat daily whenever heat shall be

required for the comfortable occupancy of the premises.

- (c) Water from city mains for drinking, lavatory and toilet purposes as customary for office use.
- (d) Operatorless elevator service in common with other tenants at all times.
- (e) Electricity for normal office uses.
- (f) Window washing of all windows in the premises, both inside and out, weather permitting as required and deemed necessary by the Lessor.
- (g) Air conditioning daily as may be reasonably required for the comfortable occupancy of the demised premises by the Lessee. Lessee agrees to keep and cause to be kept closed all windows in the demised premises and at all times to cooperate fully with the Lessor in the operation of said air conditioning system and to abide by all reasonable regulations and requirements which the Lessor may prescribe to permit the proper functioning and protection of said air conditioning system, when necessary by reason of accident or emergency or for repairs, operations, replacements or until improvements shall have been completed.

Lessor shall not have any responsibility or liability for failure to supply air conditioning during said repair, replacement or improvement period mentioned above or when prevented from so doing by any cause beyond Lessor's control or by laws, orders, or regulations of any Federal, State, or Municipal authority and Lessee shall be entitled to no diminution or abatement of rent by reason of the stoppage of such air cooling or conditioning for any of the aforesaid reasons whatsoever nor shall the same in any way affect the obligation of the Lessee to perform and to fulfill its covenants under this Lease. Lessor agrees to make any repairs to the air conditioning system promptly and with due diligence, provided, however, that during the cooling season, Lessor will exercise its best efforts to complete said repairs as quickly as possible.

- (h) Washing of interior walls as frequently as necessary to maintain a neat appearance.
- ii. The Lessor does not warrant that any of the services or utilities above mentioned will be free from interruptions caused by repairs, renewals, improvements, operations, strikes, walkouts, accidents, inability of the Lessor to obtain fuel or supplies, or any other

cause or causes beyond the reasonable control of the Lessor. Any such interruption of service shall never be deemed as eviction or disturbance of the Lessee's use and possession of the premises or any part thereof, or render the Lessor liable to the Lessee for damages, or relieve the Lessee from performance of the Lessee's obligations under this Lease, provided, however, that the Lessor will at all times use reasonable efforts promptly to remedy any situation which might interrupt such services.

iii. All of the services and utilities furnished by the Lessor as outlined in Paragraph (i) of this section C above shall be collectively referred to as "Utilities and Services".

D. LESSEE'S OBLIGATION TO PAY RENT: It is understood that Lessee shall pay the Rent, and Additional Rents, where appropriate, and the payment of one shall not affect Lessee's obligation to pay the other. A failure to pay Rent, or Additional Rents when due shall be deemed to be a material breach of the Lease. Nothing in this document shall be construed so as to alleviate Lessee from liability for either Base Rent or Additional Rents in the event of default under this Lease as amended, or otherwise.

THIS LEASE IS MADE UPON THE FOLLOWING TERMS, CONDITIONS AND COVENANTS:

3 - POSSESSION

The Lessor covenants that the Lessee on paying the Rent, hereinafter referred to as "Rent", and Additional Rents, if any, and performing all the covenants and agreements herein contained shall peaceably and quietly have, hold and enjoy the demised premises, provided, however, the Lessor shall not be liable for the failure or inability of the Lessee to obtain possession of said premises provided the Lessor shall exercise due diligence and effort to place the Lessee in possession.

4 - CONDITION

Lessor warrants that said premises are in good condition and are fit and suitable for the use or purpose for which they are let. The Lessor or Lessor's agent have made no representation or promises with respect to said building or the demised premises except as herein expressly set forth.

5. - LESSOR'S DUTIES AS TO REPAIRS AND MAINTENANCE

Lessor agrees to undertake the operation, maintenance and repairs of the Building, the Premises and the parking and other common areas and shall keep the Building, the Premises, and the said parking and other common areas (including the lawns and landscaping) in a good state of repair and condition. Lessor shall maintain and keep in good repair the roof, walls (interior and exterior), ceilings, and floors of the Buildings and the Premises, will replace all plate and other glass, if and when broken, unless caused by Lessee, keep the roof, gutters and downspouts clean, will keep the interior of the Premises, together with all electrical, plumbing, elevators, heating, air

conditioning, sprinkler systems, and other mechanical installation and/or systems therein, in good order and condition.

Lessor reserves the right after reasonable notice and at any time to enter upon said premises by himself, his workmen, contractor, architect, artisans and laborers, to make such repairs and to do such work on or about said premises as Lessor may deem necessary or proper, or that Lessor may be lawfully required to make; and such repairs shall be made at the Lessee's own risk as to his goods, wares, fixtures, equipment, stock, furnishings, etc. as to protection thereof from theft or damages or other hazard directly or indirectly connected with such repair work; provided however, that the Lessor shall not be relieved of liability for damages or loss relating to or arising out of any such theft, damages, or other hazard created directly by the Lessor or an employee of the Lessor.

6 - INSURANCE

Lessee shall obtain and during the entire term hereof and all extension of renewals thereof, shall keep in force and effect, the following insurance coverages:

A. Casualty Insurance. Lessee shall insure its furniture, furnishings, equipment, leasehold improvements and other property located in, on or about the Building against such risks and in such amounts as Lessee deems appropriate. Except as otherwise provided herein, Lessor shall have no liability for any loss, damage or other casualty to Lessee's property.

B. Liability Insurance. Lessee agrees that, at Lessee's own cost and expense, Lessee shall procure and continue in force in the names of Lessor and Lessee, general liability insurance against any and all claims for injuries to persons or damage to property occurring in or upon the Leased Premises, including, but not limited to, all damage from signs, glass, awnings, fixtures or other appurtenances, now or hereafter erected upon the Leased Premises, during the term of this Lease. Such insurance shall, at all times, be in an amount not less than One million and No/100 (\$1,000,000.00) Dollars single limit. Such insurance shall be written by a company or companies authorized to engage in the business of general liability insurance in the State of Alabama, and there shall be delivered to Lessor customary evidence of such insurance.

The policies of insurance provided for in this paragraph 6.B are to be provided by Lessee, it being understood and agreed that fifteen (15) days prior to the expiration of any such policy of insurance, Lessee will deliver to Lessor evidence of renewal or a new policy to take the place of the policy expiring with further understanding that, should Lessee fail to furnish such evidence of renewal or new policy to take the place of the policy or policies expiring as provided in this Lease, and at the times herein provided, Lessor may obtain such insurance and the premiums on such insurance shall be deemed additional rental to be paid by Lessee to Lessor, on demand.

7 - REMODEL OR ALTER

Lessee shall, during the term of this Lease, have the right to remodel, recondition, convert, change, modify and make such alterations in said premises as it finds necessary or desirable in adapting said premises for its purpose; provided, however, that no alterations shall be made without first submitting the plans and specifications thereof to the Lessor and receiving the written consent of the Lessor. The Lessor will bear no costs which may be incurred by Lessee in making such alterations or modifications.

All permanent improvements, alterations, or modifications shall become the sole and exclusive property of the Lessor from and after the time they are made. The Lessee agrees to hold the Lessor harmless of and from all liens by reason of any such remodeling, alterations, repairs, changes or modifications.

8 - LESSEE'S DUTIES AS TO MAINTENANCE AND REPAIR

Lessee agrees to take good care of the Premises and not to allow or commit any waste with respect to the Premises or Building, and that upon termination of this Lease, by lapse of time or otherwise, Lessee will surrender the Premises to Lessor in as good condition as at the date of initial possession hereunder, by Lessee, ordinary wear and tear excepted. Additionally, Lessee will replace all keys lost or broken, and will keep the interior of said premises in good order and condition, and will promptly repair all damage suffered to the Premises or Building as a result of or from acts of commission or omission of Lessee or Lessee's employees or patrons. Should Lessee fail to do or undertake the replacement, maintenance and repair of the items and things herein required of Lessee, the Lessor may do and undertake the same; after two weeks' written notice, and the Lessee will pay the Lessor the costs and expenses thereof, together with interest thereon at the then prevailing local market prime rate, upon demand, and any sum thus due from Lessee to Lessor by virtue hereof shall be secured as additional rent under the terms of this Lease.

9 - LESSOR RELEASED

Lessor shall not be liable for any loss or damage caused by, or growing out of, any breakage, leakage, getting out of order or defective conditions of elevators, heating, air conditioning, other mechanical installations and/or systems, electric wiring, pipes, closets or plumbing, or any of them, nor shall Lessor be liable for any damage to any property on said premises caused by, or growing out of, fire, rain, lightning, wind, high water, overflow water, freezing or other causes. None of the foregoing serves to release the Lessor from negligence on the part of Lessor related thereto.

10 - NUISANCES AND ORDINANCES

Lessee will comply at all times and in all respects with all laws and ordinances relating to nuisances, health, safety and sanitation insofar as the building and premises hereby let, and the streets and highways bounding the same are concerned, and the Lessee will not by any act, or omission, render the Lessor liable for any violation thereof. Lessee will not commit any waste of property, or permit the same to be done, and will take good care of said building and said premises at all times.

11 - OVERLOADING

Lessee will not overload the building, its floors, roof, walls or elevators and shall be liable for all damages to the property or other consequences of overloading and Lessee assumes the further responsibility to determine the extent to which the premises may be used without violating this provision.

12 - DEFAULT

Upon the happening of any one or more of the events as expressed below in (a) to (h) inclusive (which said events shall

separately and severally constitute a default hereunder at Lessor's option), the Lessor shall have the right at the option of the Lessor to: (1) annul and terminate this Lease, and thereupon re-enter and take possession of said premises; or (2) re-enter and re-let said premises from time to time, as agents of the Lessee, and such re-entry and /or re-letting shall not discharge the Lessee from any liability or obligations hereunder, except that net rents (that is, gross rents less the expense of collecting and handling, and less commissions) collected as a result of such re-letting shall be a credit on the Lessee's liability for rents under the terms of this Lease. Nothing herein, however, shall be construed to require the Lessor to re-enter and re-let in such event. Nor shall anything herein be construed to postpone the right of the Lessor to sue for rents, whether matured by acceleration or otherwise, but on the contrary the Lessor is hereby given the right to demand, collect and/or sue therefor at any time after default.

- (a) In the event the Lessee should fail to pay any one or more of said installments of base rent as and when the same becomes due, or fail to pay on demand any amount due Lessor and secured as additional rent hereunder, provided however that Lessor agrees to give 30 days written notice of any amounts of base rent or additional rents which are past due.
- (b) In the event Lessee removes, attempts to remove or permits to be removed from said premises, except in the usual course of trade, the goods, furniture, effects or other property of the Lessee brought thereon.
- (c) In the event an execution or other legal process is levied upon the goods, furniture, effects or other property of the Lessee brought on said premises, or upon the interest of the Lessee in this Lease.
- (d) In the event a petition in bankruptcy or a petition under the Bankruptcy Act, or any amendment thereto, is filed by or against the Lessee or the Lessee is adjudged a bankrupt.
- (e) In the event an assignment for the benefit of creditors is made by the Lessee.
- (f) In the event of the appointment of a Receiver of Lessee's property or business.
- (g) In the event the Lessee, before the expiration of said term, without the written consent of the Lessor, vacates said premises or abandons the possession thereof, or uses the same for purposes other than the purposes for which the same are hereby let, or ceases to use said premises for the purposes herein specified.
- (h) In the event the Lessee violates any of the other terms, conditions or covenants on the part of the Lessee herein contained, upon failure to cure after 30 days written notice from Lessor.

13 - ACCELERATION

Upon default, breach of condition, or upon the termination of this Lease or re-entry upon said premises for any one or more of the causes set forth in Paragraph 12 above, or upon any

termination of this Lease or re-entry of said premises, the rents hereunder for the entire rental period and other indebtedness, if any, payable under provisions hereof shall be and become immediately due and payable and without regard to whether or not possession of the premises shall have been surrendered to or taken by the Lessor.

14 - IMPROVEMENTS

All improvements and additions to the leased premises shall adhere to the leased premises, and become the property of the Lessor, with the exception of such additions as are usually classed as furniture and trade fixtures. Said furniture and trade fixtures are to remain the property of the Lessee, and may be removed by the Lessee upon the expiration of this lease, provided all terms, conditions and covenants of this lease have been complied with by the Lessee and said Lessee restores the building and premises to its original condition, natural wear and tear excepted, and with the further exception of cabinets, shelves, credenzas, and other items of customized woodwork installed by or at the expense of Lessee.

15 - FIRE/WIND AND OTHER CASUALTIES

If the rented premises shall be damaged by fire, windstorm, riot, insurrection or other cause, without fault of the Lessee, then, and in that event the Lessor shall have the option within sixty days from the time such damage shall have occurred to elect whether Lessor shall or shall not repair and restore said building to its original shape and condition, and the Lessee shall be notified of such election in writing. If Lessor elects to repair and restore the damaged building as aforesaid, Lessor shall make such repairs as soon thereafter as is practicable upon exercising all reasonable diligence, and from the time such damage occurs until the repairs are completed, an equitable abatement of rent shall be allowed. If Lessor elects not to repair said building, there shall be an equitable abatement of rent allowed until such time as the Lessor may make said repairs, as aforesaid, PROVIDED, HOWEVER, that upon the Lessor electing not to make such repairs the Lessee may, at his own expense, make same, and in that event the said abatement of rent shall continue for the duration of the original term, or until the Lessor shall have repaid the Lessee the reasonable costs of such repairs, plus interest thereon at six (6%) per centum per annum from the date of completion of such repairs, or whichever shall first occur. On demand, the Lessee shall furnish the Lessor an itemized statement of expenses of such repairs.

16 - NOTICES

Wherever and whenever in this Sublease it shall be required or permitted that notice or demand be given or served on any party, such notice or demand shall be in writing and shall be given or served by delivery in person to the intended recipient or by deposit in the U.S. Mail's first class postage prepaid, certified mail return receipt requested:

To Lessor at: Springhill Medical Complex, Inc.
Attention: Randy A. Sucher
3632 Dauphin Street, Suite 101-B
Mobile, AL 36608

To Lessee at: Mobile Cancer Center, Inc.
Attention: Kenneth Ellingwood, M.D.
3719 Dauphin Street
Mobile, AL 36608

Such addresses may be changed from time to time by any party by serving notices as provided. No failure to give or receive any such notice shall affect the rights of Lessee under this Sublease.

17 - SIGNS

The Lessee shall not display or erect, or cause to be painted on or affixed to, the demised premises (improvements and grounds), any lettering, signs, advertisements, awnings, or other projections thereon, without the written consent of the Lessor first sought and obtained, which consent shall not be unreasonably withheld. The Lessee's request therefore shall be in writing and shall contain such information as to the proposed lettering and/or signs as the Lessor may reasonably require.

18 - SURRENDER

The Lessee will, upon the expiration or termination of this Lease, surrender the quiet and peaceable possession of said premises in the like good order as the same were in at the commencement of said term, unless, meanwhile repaired or improved, in which event, from the time of such repairs or improvements as to that portion so repaired or improved, natural wear and tear excepted.

19 - ATTORNEY'S FEE

In case a suit or alternative form of dispute resolution should be brought for the possession of the Building, for the recovery of any sum due hereunder, or because of the breach of any other covenant herein, the losing party shall pay to the prevailing party all costs involved in bringing the claim including a reasonable attorney's fee as part of said costs which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment. In addition, the prevailing party shall be entitled to recover all costs and expenses including reasonable attorney's fees incurred by the prevailing party in enforcing any judgment or award against the other party.

20 - EASEMENTS

No representation on the part of the Lessor, or Lessor's agent, is here contained concerning the existence or not of any rights-of-way, party wall agreements, zoning ordinances, easements, prescriptions, or covenants running with the land affecting the property or improvements here demised, and to the extent only as such may be determined by a physical inspection of the property and/or as such may be of record in the Probate Court of Mobile County, Alabama, the Lessee takes possession hereunder charged with notice thereof, and is bound to recognize all such rights-of-way, party wall agreements, easements, prescription and covenants running with the land, and zoning ordinances, and to

indemnify and hold the Lessor harmless for any violations or breaches thereof by said Lessee.

21 - INDEMNITY

The Lessee will indemnify and save harmless the Lessor from all fines, suits, claims, demands and actions of any kind or nature, by reason of any breach, violation or non-performance of any condition hereof on the part of the Lessee. The Lessee will indemnify, protect and save harmless the Lessor herein, from any

loss, cost, damage, or expense caused by injuries to persons or property, while in, on, or about said premises herein leased, except to the extent that such injury to person or property shall be proximately caused by a breach of this Lease by the Lessor.

22 - LESSOR'S RIGHTS CUMULATIVE

The failure of the Lessor to insist, in any one or more instances, upon a strict performance of any of the covenants of this Lease, or to exercise any option herein contained, shall not be construed as a waiver, or a relinquishment for the future, of such covenant or option, but the same shall continue and remain in full force and effect. The receipt by the Lessor of rent, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Lessor of any provision hereof shall be deemed to have been made unless expressed in writing, and signed by the Lessor, or Lessor's Agent.

23 - HOLDING OVER

Should the Lessee continue to occupy the premises after the expiration of said term or after a forfeiture incurred, then, except as otherwise provided for in this paragraph, the Lessee shall continue as a tenant under the terms of this Lease (except as to base rent which shall be increased each year to 10% of the prior year's base rent) from year to year, and each holding over period annually thereafter shall in like manner create and cause a similar extension of this Lease from year to year. PROVIDED, HOWEVER, that if the said Lessee continues to remain in the premises after the expiration of the said term, any holding over extension or after a forfeiture incurred, the Lessor, at any time within one hundred and twenty days after the commencement of such period of holding over, whether rent has been accepted by the Lessor or not, reserves the unqualified right, or option to notify the Lessee in writing within said period of his election to terminate the Lease or any extension thereof, said termination to be effective at the end of the calendar month in which said notice is given, unless less than ten days remain in said month, in which event the effective date of termination shall be the last day of the calendar month following the date on which notice is given.

24 - EMINENT DOMAIN

If the whole of the demised premises shall be taken by Federal, State, County, City, public utility, or other authority for public use or under any statute, or by right of eminent domain, then when possession shall be taken thereunder of said premises, the term hereby granted and all rights of the Lessee hereunder shall immediately cease and terminate, and the Lessee shall not be entitled to any part of any award that may be made for such taking, nor to any damages therefore except that the rent shall be adjusted as of the date of such termination of the Lease. If but a part of the demised premises be taken by right of eminent domain, this Lease shall continue in full force and effect, as to the property remaining, and provided such property remaining is capable of continued enjoyment by the Lessee for the uses and purposes provided for hereunder, and the Lessee shall not be entitled to any award that may be made for such taking, nor shall such taking constitute a termination of this Lease, or a constructive eviction of Lessee. However, the rent payable hereunder shall be adjusted as of the time of such taking to equitably reflect the change in the size of said remaining property.

25 - CONDEMNATION

In the event the improvements on the premises here demised are condemned by any Public Authority except under conditions described in the paragraph immediately following, it is agreed and understood that upon notice of such order of condemnation that the Lessor has the option or election to (a) terminate this lease as herein provided, or (b) make the required repairs. If the Lessor elects to terminate this Lease he shall give notice thereof in writing to the Lessee within thirty days of the date of the receipt of the order of condemnation from the Public Authority, and the Lessee shall then have thirty days from the receipt of the Lessor's notice to exercise his election, to (a) surrender possession of the premises or (b) continue in possession and make the required repairs at the Lessee's expense.

If the repairs are made by either the Lessor or Lessee, as herein provided for, during the actual period of such repairs, it is agreed that there shall be a proportionate abatement of rent. PROVIDED, HOWEVER, that nothing herein contained shall be construed as prohibiting, limiting, diminishing or altering the Lessor's right to contest, deny, pretest, or in any other way attack, question or defend the matters involved in such condemnation both as to the facts and the authority of the Public Authority, and in that event the options or elections hereinabove provided for shall be exercisable in the manner above provided, only after the matters in contest have been judicially determined. The Lessor shall give notice to the Lessee of his election to contest the order of condemnation within thirty days after receipt of same.

26 - SAFETY

If any Public Authority requires structural or other repairs or changes to the particular premises here demised; (for example, such as fire extinguisher systems, fire escapes, extra supports and braces, lead walls or shields for x-ray radiation safety) all or any of which are required by virtue of the Lessee's use of the property, then such changes, repairs, additions, etc., shall be promptly made after notice thereof, solely at the Lessee's expense, and upon the Lessee failing or refusing to do so, the Lessor may (a) consider this Lease in default, or (b) make such repairs, changes, additions, etc., at the Lessee's cost and expense, and such sums so expended together with interest thereon at the highest legal rate then allowed shall be payable on demand and be secured as additional rent hereunder.

27 - ADJOINING PROPERTY

Lessor does not warrant any rights to light, view or air over adjoining property and any diminution or shutting off of light, view or air by any structure which may exist or be erected adjacent to said building shall in no wise affect this Lease, or impose any liability on Lessor.

28 - SUCCESSORS IN INTEREST

Every provision hereof applicable to the Lessor and ~~every provision hereof applicable to the Lessee shall also bind,~~ apply to and run in favor of "their respective successors in interest, heirs, executors, administrators or personal representatives" as fully as if said quoted words were inserted after the word "Lessor" and "Lessee" wherever they appear herein, except that this provision shall not permit the assignment of the Lease, or subleasing of the premises except on the conditions here imposed.

29 - MORTGAGE

This Lease shall at all times be subject and subordinate to the lien of any mortgages now or hereafter placed upon the building, and to all advances made or hereafter to be made upon the security thereof. The Lessee binds and obligates himself to execute and deliver such further instrument or instruments subordinating this Lease to the lien of any such mortgage or mortgages at any time same may or shall be desired by any mortgagee or proposed mortgagee or by the Lessor. It is further agreed and understood, however, that whether this Lease is subordinate to any such mortgage, or not, the Lessee's absolute right to quiet enjoyment of the premises devised hereby shall be maintained so long as Lessee shall pay all rentals and perform all duties required of Lessee hereunder.

30 - "LESSEE" DEFINED

The word "Lessee" includes the plural as well as the singular and if there be more than one Lessee, a breach of condition or default by any one shall, at the Lessor's option, bind all of the Lessees equally under the terms of this Lease. The term Lessee also includes natural persons, partnerships and corporations or any combination thereof.

31 - ARBITRATION

In the event any dispute shall arise between the Lessor and the Lessee, it is agreed and understood the matter in dispute, at the election of either party, shall be arbitrated. In order to provide for arbitration, it is further agreed that the Lessor or Lessor's agent shall appoint one arbitrator and the Lessee shall appoint another, and the two arbitrators so appointed shall select a third, and the opinion of the majority of said arbitrators shall in all things be final and binding upon the parties hereto. Any costs incurred in securing arbitration shall be borne equally by and between Lessor and Lessee.

32 - RIDERS

All riders attached hereto are by reference made a part hereof and any terms or conditions of such rider in conflict or inconsistent with the printed lease, shall supersede and control.

33 - CAPTIONS

The captions and other paragraph designations of this Lease are for convenience only and are not a part of this Lease and do not in any way limit or amplify the terms and provisions of the Lease.

34 - ASSIGNMENT AND SUB LEASING VOID

Each and every transfer or assignment of this Lease by the Lessee or any interest therein, and each and every subletting of said premises, any part thereof, or any interest therein, shall be null and void, unless the written consent of the Lessor be first obtained thereto, which such written consent shall not be unreasonably withheld, and any violation hereof is agreed and understood to constitute a substantial and material breach of condition of this Lease, with all of the rights thereto pertaining as in the case of default for any other cause hereunder.

35 - CERTAIN RIGHTS RESERVED TO THE LESSOR

The Lessor reserves the following rights:

- i. Access to Mail Chutes: To have access for the Lessor and other Lessees of the Building to any mail chutes located on the premises according to the rules of the United States Post Office.
- ii. Occupancy: During the last one hundred twenty (120) days of the term of this Lease if during or prior to that time the Lessee vacates the premises, to decorate, remodel, repair, alter or otherwise prepare the premises for reoccupancy.
- iii. Pass Keys: To have pass keys to the premises.
- iv. Access for Repairs, etc.: To have access for repairs, alterations, additions and improvements to the premises or to the building.
- v. Show Premises: To show the premises to prospective Lessees or brokers during the last year of the term of this Lease as extended, and to prospective purchasers at all reasonable times provided prior notice is given to Lessee in each case and the Lessee's use and occupancy of the premises shall not be materially inconvenienced by any such action of the Lessor.
- vi. Service Contracts: To designate all sources furnishing ice, drinking water, beverages or foods brought into the building for resale to any of the buildings occupants or the occupants' invitees; provided, however, nothing in this paragraph shall be construed to prohibit the Lessee from providing beverages or foods within the Lessee's demised premises for the exclusive use of the Lessee or the Lessee's agents, servants or employees.
- vii. Heavy Equipment: To approve the weight, size and location of safes or heavy equipment or articles which articles may be moved, in, about or out of the Building or premises only at such times and in such manner as Lessor shall direct and in all events, however, at Lessee's sole risk and responsibility.
- viii. Close Building: To close the Building after regular working hours and on legal holidays subject, however to the right of admittance by Lessee or Lessee's employees or invitees, under such regulations as Lessor may prescribe from time to time, which may include by way of example but not of limitation, that persons entering or leaving the Building identify themselves to a watchman by registration or otherwise and that said persons establish their right to enter or leave the Building.
The Lessor may enter upon the premises and may exercise any or all of the foregoing rights hereby reserved without being deemed guilty of an eviction or disturbance of the Lessee's use or possession and without being liable in any manner to the Lessee.

36 - DEATH OR DISABILITY OF LESSEE

Notwithstanding any other provision of this lease to the contrary, it is expressly agreed by and between Lessor and Lessee that the obligations of the Lessee hereunder shall terminate at the end of the calendar month in which Lessor receives written

notice of the death or permanent disability of all the physician partners of Lessee.

37 - LATE CHARGES

Lessee agrees to pay unto Lessor all sums provided for in this lease at the time and in the manner provided. If Lessor shall make any expenditure for which Lessee is responsible or which Lessee should make, then, at Lessor's election, the amount thereof may be added to the installment of rent next falling due, or constitute any item of account payable on demand by Lessor. Lessee agrees to pay unto Lessor as additional rent all sums provided for in this lease at the time and in the manner provided, and to be imposed as additional rent the following late charges for the delay in payment of any monthly installment or rental, Lessor's operating cost, assessment, or any other charge or sums due hereunder; if full remittance of the amounts due shall not have been received by Lessor ten (10) days after the due date, a late charge of five percent (5%) of such amounts due shall be added thereto; and if such delay continues until fifteen (15) days after the due date, then an additional five percent (5%) late charge shall be added.

38. - PARKING

Lessor shall provide adequate parking on or near its campus for all employees, patients and visitors to the building. Lessee shall ensure that its employees utilize the parking facilities designated by Lessor and agreed to by Lessee which is the Dauphin Way Baptist Church parking lot where SMH employees park. Lessee agrees to have spaces reasonably adjacent to the building for parking by Lessee's physician employees.

39. - OPTION TO RENEW

LESSOR grants LESSEE an option to renew this lease at the end of the initial lease period for an additional term up to 60 months at a price consistent with market rentals to be mutually agreed to between the parties. Lessee shall provide written notice to the Lessor of the exercise of this option within 60 days prior to the expiration of the Lease.

IN WITNESS WHEREOF, the Lessor and the Lessee have executed THESE PRESENTS in duplicate by affixing hereto their respective hands and seals on the day and date first above written.

WITNESS AS TO LESSEE:

MOBILE CANCER CENTER, INC.

James Johnson

By: Donald E. Blanton
As It's President

WITNESS AS TO LESSOR:

SPRINGHILL MEDICAL COMPLEX, INC.

James S. Kelt

By: Ray A. Gaskin
As It's Executive Vice President