

STATE MS.-DE SOTO CO. FILED
OCT 31 9 43 AM '00

**PARKING
AND
EASEMENT AGREEMENT**

BK 381 PG 777
W.E. ... PLK.

THIS EASEMENT AGREEMENT ("Agreement") made effective as of the 18th day of October, 2000, by Baptist Memorial Health Care Corporation, a Tennessee not-for-profit corporation ("Grantor"), and Healthcare Realty Trust Incorporated, a Maryland corporation ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner of certain real property located in Southaven DeSoto County, Mississippi, , as more particularly described on Exhibit "A" which is attached hereto and is fully incorporated by reference herein for all purposes "Hospital Property"); and

WHEREAS, simultaneously herewith, Grantor and Grantee are entering into a Ground Lease for a portion of the Hospital Property, as more particularly described on Exhibit "B" which is attached hereto and is fully incorporated by reference herein for all purposes ("Ground Lease Property"), and whereon Grantee is constructing a medical office building; and

WHEREAS, Grantor and Grantee desire to provide for certain easements over and upon the Hospital Property and the Ground Lease Property for the mutual benefit of Grantor and Grantee pursuant to the terms and provisions set forth herein.

NOW, THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, and the mutual covenants and obligations set forth below, the receipt and sufficiency of which are hereby acknowledged and confessed, the parties hereto agree as follows:

1. Hospital Property Easement. Grantor hereby grants to Grantee, its legal representatives, successors and assigns, and Grantees and its successors and assigns, lessees, sublessees of any degree, employees, agents, invitees and guests (collectively hereinafter referred to in this Paragraph 1 as "Grantees") (i) a non-exclusive easement and right-of-way over and across any and all of the parking facilities and spaces located on the Hospital Property in connection with the operation and use of the medical office building to be constructed on the Ground Lease Property, and (ii) a non-exclusive easement and right to use and park motor vehicles into, out of, on, over, upon and across the surface parking spaces (the "Parking Facility") located on the Hospital Property. Grantor hereby reserves the right to adopt and change from time to time reasonable rules to regulate the persons and vehicles which may use the Parking Facility located on the Hospital Property; provided, however, that no such rule may materially or adversely affect Grantee's access to and right to use and enjoy the Hospital Property; and

provided, further, that upon the termination of the Ground Lease, the easement granted pursuant to this Paragraph 1 shall terminate.

2. Reconfiguration of Hospital Property Easement. Grantor shall have the right to reasonably modify the easements on the Hospital Property for the purpose of constructing new, replacement or additional buildings or parking structures on the Hospital Property or subdividing the Hospital Property as Grantor shall reasonably determine (collectively, "Additional Constructions") subject to receiving Grantee's prior consent, which shall not be unreasonably withheld, delayed or conditioned. Reasons which Grantee can use to reasonably withhold its consent include, without limitation, the following (collectively, "Reasonable Objections"): (i) the Additional Construction reduces the non-exclusive parking spaces on the Hospital Property which benefit the Ground Lease Property below the minimum number of parking spaces required by applicable building codes, (ii) the Additional Construction alters the existing driveways and traffic circulation pattern on the Ground Lease Property in a manner that adversely affects Grantee's use or enjoyment of the Ground Lease Property, (iii) the Additional Construction (including the design of parking structures) substantially impairs the use, enjoyment or exercise of any easements, covenants, conditions, restrictions or rights mentioned within this Agreement for the benefit of the Ground Lease Property, (iv) the Additional Construction is in violation of any local, state or federal law, code, statute, ordinance, directive, rule or regulation (collectively, "Statutes"), or (v) the Additional Construction will result in an additional cost or expense (including, without limitation, any additional construction cost or operation, maintenance and repair cost to the Ground Lease Property which Grantor is unwilling to assume). Unless Grantor shall receive written notice of any specific Reasonable Objection within twenty (20) days after Grantor requests Grantee's consent, such consent shall be deemed given.

3. Ground Lease Property Easement. Grantee hereby grants to Grantor, its legal representatives, successors and assigns, and Grantor's and its successors' and assigns' lessees, sublessees of any degree, employees, agents, invitees and guests (collectively hereinafter referred to in this Paragraph 3 as "Grantor"), (i) a non-exclusive easement and right-of-way over and across any and all of the parking facilities and spaces located on the Ground Lease Property in connection with the operation and use of the hospital on the Hospital Property, and (ii) a non-exclusive easement and right to use and park motor vehicles into, out of, on, over, upon and across the parking spaces located on the Ground Lease Property. Grantee hereby reserves the right to adopt and change from time to time reasonable rules to regulate the persons and vehicles which may use the parking facilities and spaces located on the Ground Lease Property; provided, however, that no such rule may materially or adversely affect Grantor's access to and right to use and enjoy the Ground Lease Property; and provided, further, that upon the termination of the Ground Lease, the easement granted pursuant to this Paragraph 3 shall terminate.

4. Reconfiguration of Ground Lease Property Easement. Grantee shall have the right to reasonably modify the easement for the purpose of constructing new, replacement or additional buildings or parking structures on the Ground Lease Property or subdividing the Ground Lease Property as Grantee shall reasonably determine (collectively, "Additional Construction") subject

to receiving Grantor's consent which shall not be unreasonably withheld, delayed or conditioned. Reasons Grantor can use to reasonably withhold its consent include, without limitation, the following (collectively, "Reasonable Objections") (i) the Additional Construction reduces the non-exclusive parking spaces on the Ground Lease Property which benefit the Hospital Property below the minimum number of parking spaces required by applicable building codes, (ii) the Additional Construction alters the existing driveways and traffic circulation pattern on the Hospital Property in a manner that adversely affects Grantor's use or enjoyment of the Hospital Property, (iii) the Additional Construction (including the design of parking structures) substantially impairs the use, enjoyment or exercise of any easements, covenants, conditions, restrictions or rights mentioned within this Agreement for the benefit of the Hospital Property, (iv) the Additional Construction is in violation of any local, state or federal Statute, or (v) the Additional Construction will result in an additional cost or expense (including, without limitation, any additional construction cost or operation, maintenance and repair cost) to the Hospital Property, which Grantor is unwilling to assume). Unless Grantee shall receive written notice of any specific Reasonable Objection within twenty (20) days after Grantee requests Grantor's consent, such consent shall be deemed given.

5. Additional Construction. Subject to conditions of this Agreement, both parties shall in good faith reasonably cooperate to execute such documents to consent to the Additional Construction on the other party's parcel (including, without limitation, to amending any existing covenants, relocating easements affecting the parcels and obtaining the consent of any governmental authority to such amendment of the existing covenants).

6. No Obstructions. No walls, fences, obstructions or barriers of any kind shall be constructed or maintained on the Hospital Property or the Ground Lease Property, or any portion thereof, by a Party which shall prevent or materially interfere with or impair the use, enjoyment or exercise of any of the easements, covenants, conditions, restrictions or rights granted or mentioned herein, or the reasonable access and movement of pedestrian and vehicular traffic between the various parcels; provided, however, that additional or relocated access driveways and reasonable traffic controls (as may be reasonably necessary to guide and control the orderly flow of traffic) may be installed by either party on their respective parcel as long as (i) existing access driveways and the existing traffic circulation pattern of the Hospital Property and the Ground Lease Property is not changed or affected to the material detriment of either parcel, and (ii) the use, enjoyment and exercise of the easements, covenants, conditions, restrictions and rights granted or mentioned herein for the benefit of each party and the Hospital Property and the Ground Lease Property is not materially impaired, interfered with or restricted.

7. Mortgagee Subordinations. Grantor covenants and agrees to obtain the consent and approval of all mortgagees that hold title to any mortgages encumbering the Hospital Property thereby evidencing said mortgagees (i) full and unconditional consent to and acknowledgment, confirmation, adoption and approval of the easements granted herein, and (ii) full and unconditional agreement to expressly subordinate all liens and security interests created in any such mortgages to the easements granted herein. The foregoing approval and express

subordination provision shall bind said mortgagees, their legal representatives, successors and assigns forever and shall be a covenant running with the Ground Lease Property and the Hospital Property for so long as the easements granted herein shall exist.

8. Insurance.

a. Each party shall maintain public liability and property damage insurance with a single combined limit of not less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence, \$3,000,000 in the aggregate with umbrella coverage of not less than \$5,000,000 per occurrence and \$5,000,000 in the aggregate which may be provided in the form of aggregate blanket policies in favor of the insured party, and all other parties as additional insured(s), against any and all liability with respect to the parcel the party owns.

b. Each party hereto waives the right of recovery and subrogation against the other parties and their occupants and permittee and each insurance policy shall provide that the insurance company waives all right of recovery by way of subrogation against all other parties and their occupants and permittee in connection with any damage covered by such policy.

c. Each party shall furnish to the other party, on written demand, a certificate evidencing that the insurance required herein is in effect. All insurance required herein shall contain an endorsement requiring at least ten (10) days written notice from the insurance company to all parties before cancellation or modification of the coverage, scope or amount of any policy occurs. Notwithstanding anything to the contrary contained herein, the obligation to carry insurance may be brought within the coverage of a blanket policy or policies carried and maintained by Grantor or Grantee.

d. Each party agrees and covenants to obtain and maintain insurance protecting the other against claims, suits, judgments or awards of monetary damages for personal injury, property damage and general liability under a policy or policies with minimum limits of \$1,000,000 per occurrence, \$3,000,000 in the aggregate with umbrella liability coverage not less than \$5,000,000 per occurrence and \$5,000,000 in the aggregate.

e. Each party hereby waives any and every claim for recovery from the other for any and all loss, damage or general liability to the extent that the amount of loss, damage or general liability is recovered under their policies of insurance; provided, however, that the foregoing waiver shall not be operative in any case where the effect thereof is to invalidate any insurance coverage of the waiving party or increase the cost of such insurance coverage; provided, further, however, that each party agrees to give written notice of the terms of this mutual waiver to each insurance company which has issued, or in the future may issue, policies to it for physical damage or general liability and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waiver.

9. Parties Bound. Each of the parties hereto agrees that prior to transferring, assigning or conveying to any person or entity any interest in the property owned by it, it shall use reasonable efforts to cause such person or entity to assume all of the obligations of this Agreement respecting the interest in the property is transferred, assigned or conveyed, and the transfer, conveyance or assignment shall recite that it is subject and subordinate to the terms and provisions of this Agreement. In this regard, in conjunction with and in addition to the terms and provisions set forth herein, this Agreement shall be binding upon and inure to the benefit of Grantor and Grantee and their respective legal representatives, successors and assigns.

10. Grantor Indemnity. Grantor shall, except with respect to intentional or gross negligent acts or omissions of Grantee, at all times defend, relieve, indemnify, protect and save harmless Grantee from and against any and all claims, liabilities, obligations, costs and expenses (including, without limitation, reasonable attorney's fees and costs) relating to death of or injury to persons or damage to property, including, without limitation, property owned or controlled by or in possession of Grantor, that may in whole or in part, arise from or be caused by:

- a. Grantor's negligent construction, operation, maintenance, use or occupancy of the Hospital Property;
- b. Grantor's other acts, omissions or negligence; or
- c. Grantor's failure to observe and abide by any of the terms, covenants, conditions, restrictions or easements in this Agreement and any applicable federal, state or local Statute.

11. Grantee Indemnity. Grantee shall, except with respect to intentional or gross negligent acts or omissions of Grantor, at all times defend, relief, indemnify, protect and save harmless Grantor from and against any and all claims, liabilities, obligations, costs and expenses (including, without limitation, reasonable attorney's fees and costs) relating to death of or injury to persons or damage to property, including, without limitation, property owned or controlled by or in possession of Grantee, that may, in whole or in part, arise from or be caused by:

- a. Grantee's negligent construction, operation, maintenance, use or occupancy of the Ground Lease Property;
- b. Grantee's other acts, omissions or negligence; or
- c. Grantee's failure to observe and abide by any of the terms, covenants, conditions, restrictions or easements in this Agreement and any applicable federal, state or local Statute.

12. Successors and Assigns. All references to Grantee in this Agreement shall include Grantee, its legal representatives, successors and Assigns, all of Grantees general partners, and their legal representatives, successors and assigns, and the agents, employees and contractors of Grantee, its legal representatives, successors and assigns. All references to Grantor in this Agreement shall include Grantor, its legal representatives, successors and assigns, and the directors, officers, agents, employees and contractors of Grantor, its legal representatives, successors and assigns.

13. Non-Waiver. Waiver by any party of any breach of or default under this Agreement or of any term, covenant, restriction or condition mentioned herein, shall not be deemed to be a waiver of any subsequent or other breach of the same or of any other term, covenant, condition, restriction or license mentioned herein.

14. This Agreement shall be interpreted and construed in accordance with the laws of the State of Tennessee.

15. This Agreement may be modified or amended only by a written agreement or instrument executed by all parties hereto.

16. This Agreement may be executed and delivered in any number of counterparts, each of which, when executed and delivered, shall constitute an original, and all of which together shall constitute one and the same instrument.

17. To the extent that performance is governed by time, time shall be deemed to be of the essence.

18. This Agreement is not intended and should not be construed as a gift or dedication of any portion of the Hospital Property or the Ground Lease Property to the public or for any public purpose.

IN WITNESS WHEREOF, Grantor and Grantee have caused this Agreement to be executed effective as of the day first written above.

Witnesses

[Handwritten Signature]

Grantor:

Baptist Memorial Health Care Corporation,
a Tennessee not-for-profit corporation

By: *[Handwritten Signature]*
Its: Exec/CEO

Witness:

B. Douglas Whitman II

Grantee:

Healthcare Realty Trust Incorporated
a Maryland corporation

By: *[Handwritten Signature]*
Its: Vice President

Prepared by:

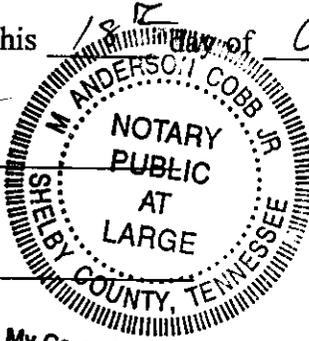
John A. Gupton, III
511 Union Street
Nashville, TN 37219
(615-726-7351)

STATE OF TENNESSEE }
COUNTY OF SHELBY }

This day personally appeared before, the undersigned authority in and for said State and County, the within named DAVID C. HOGAN known to me to be the Executive Vice President / COO respectively of BAPTIST MEMORIAL HEALTH CARE CORPORATION, a Tennessee not-for-profit corporation, who acknowledge that he signed and delivered the foregoing instrument on the day and year therein mentioned, for the purpose therein set forth, and in the capacity therein stated, for in behalf of BAPTIST MEMORIAL HEALTH CARE CORPORATION, a Tennessee not-for-profit corporation, after being duly authorized so to do.

Given under my hand and seal this 18th day of October, 2000.

[Signature]
Notary Public



My Commission Expires: _____

My Commission Expires
November 29, 2003

STATE OF Tennessee }
COUNTY OF Davidson }

This day personally appeared before, the undersigned authority in and for said State and County, the within named Eric W. Fischer known to me to be the Vice President respectively of HEALTHCARE REALTY TRUST INCORPORATED, a Maryland corporation, who acknowledge that he signed and delivered the foregoing instrument on the day and year therein mentioned, for the purpose therein set forth, and in the capacity therein stated, for in behalf of HEALTHCARE REALTY TRUST INCORPORATED, a Maryland corporation, after being duly authorized so to do.

Given under my hand and seal this 20th day of October, 2000.

[Signature]
Notary Public
My Commission Expires: 1/26/02

EXHIBIT A

LEGAL DESCRIPTION OF PART OF LOT 15 OF SOUTHCREST SUBDIVISION FOR PROPOSED HEALTHCARE REALTY TRUST SITE.

A 4.59. MORE OR LESS. ACRE TRACT OF LAND BEING KNOWN AS PART OF LOT 15 OF SOUTHCREST SUBDIVISION AS RECORDED IN PLAT BOOK 45, PAGE 5 AND BEING LOCATED IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 1 SOUTH, RANGE 8 WEST, CITY OF SOUTHAVEN, DESOTO COUNTY, MISSISSIPPI AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 4 OF SOUTHCREST SUBDIVISION AS RECORDED IN PLAT BOOK 45, PAGE 5, SAID POINT BEING THE POINT OF BEGINNING FOR THE HEREIN DESCRIBED TRACT; THENCE SOUTH 55 DEGREES 42 MINUTES 23 SECONDS EAST 225.55 FEET TO A POINT; THENCE ALONG A CURVE TO THE LEFT WITH THE FOLLOWING ATTRIBUTES: DELTA = 10 DEGREES 03 MINUTES 55 SECONDS, RADIUS = 424.00 FEET; TANGENT = 37.34 FEET, LENGTH = 74.48 FEET, CHORD BEARING = SOUTH 60 DEGREES 44 MINUTES 20 SECONDS EAST CHORD DISTANCE = 74.39 FEET TO A POINT; THENCE SOUTH 21 DEGREES 42 MINUTES 19 SECONDS WEST 463.20 FEET TO A POINT; THENCE NORTH 87 DEGREES 09 MINUTES 55 SECONDS WEST 423.15 FEET TO A POINT; THENCE NORTH 09 DEGREES 13 MINUTES 49 SECONDS WEST 259.09 FEET TO A POINT; THENCE SOUTH 68 DEGREES 18 MINUTES 39 SECONDS EAST 227.85 FEET TO A POINT; THENCE NORTH 21 DEGREES 41 MINUTES 21 SECONDS EAST 383.01 FEET TO A POINT; THENCE NORTH 34 DEGREES 17 MINUTES 35 SECONDS EAST 55.01 FEET TO THE POINT OF BEGINNING AND CONTAINING 4.59. MORE OR LESS. ACRES OF LAND BEING SUBJECT TO ALL CODES, COVENANTS, RESTRICTIONS, REVISIONS, REGULATIONS, EASEMENTS, AND RIGHT-OF-WAY OF RECORD.

EXHIBIT B

LEGAL DESCRIPTION OF PART OF LOT 15 OF SOUTHCREST SUBDIVISION FOR 5 FEET BEYOND PROPOSED HEALTHCARE REALTY TRUST BUILDING.

A 0.79, MORE OR LESS, ACRE (34,616, MORE OR LESS, SQUARE FEET) TRACT OF LAND BEING KNOWN AS PART OF LOT 15 OF SOUTHCREST SUBDIVISION AS RECORDED IN PLAT BOOK 45, PAGE 5 AND BEING LOCATED IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 1 SOUTH, RANGE 8 WEST, CITY OF SOUTHAVEN, DESOTO COUNTY, MISSISSIPPI AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 4 OF SOUTHCREST SUBDIVISION AS RECORDED IN PLAT BOOK 45, PAGE 5; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST 101.28 FEET TO A POINT; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST 28.29 FEET TO A POINT, SAID POINT BEING THE POINT OF BEGINNING FOR THE HEREIN DESCRIBED TRACT; THENCE SOUTH 68 DEGREES 17 MINUTES 41 SECONDS EAST 83.83 FEET TO A POINT; THENCE SOUTH 21 DEGREES 42 MINUTES 19 SECONDS WEST 10.00 FEET TO A POINT; THENCE SOUTH 68 DEGREES 17 MINUTES 41 SECONDS EAST 26.17 FEET TO A POINT; THENCE SOUTH 21 DEGREES 42 MINUTES 19 SECONDS WEST 10.00 FEET TO A POINT; THENCE SOUTH 68 DEGREES 17 MINUTES 41 SECONDS EAST 30.00 FEET TO A POINT; THENCE SOUTH 21 DEGREES 42 MINUTES 19 SECONDS WEST 283.00 FEET TO A POINT; THENCE NORTH 68 DEGREES 17 MINUTES 41 SECONDS WEST 63.00 FEET TO A POINT; THENCE NORTH 21 DEGREES 42 MINUTES 19 SECONDS EAST 10.00 FEET TO A POINT; THENCE NORTH 68 DEGREES 17 MINUTES 41 SECONDS WEST 26.83 FEET TO A POINT; THENCE NORTH 21 DEGREES 42 MINUTES 19 SECONDS EAST 10.00 FEET TO A POINT; THENCE NORTH 68 DEGREES 17 MINUTES 41 SECONDS WEST 30.09 FEET TO A POINT; THENCE NORTH 21 DEGREES 41 MINUTES 23 SECONDS EAST 283.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.79, MORE OR LESS, ACRES (34,616, MORE OR LESS, SQUARE FEET) OF LAND BEING SUBJECT TO ALL CODES, COVENANTS, RESTRICTIONS, REVISIONS, REGULATIONS, EASEMENTS, AND RIGHTS-OF-WAY OF RECORD.