



41 Perimeter Center East, Suite 250  
Dunwoody, Georgia 30346  
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## **MEMORANDUM**

**To:** Mayor and City Council  
**From:** Warren Hutmacher, City Manager  
**Date:** September 23, 2013  
**Subject:** **Lease of Property at 4555 North Shallowford Road**

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### **ITEM DESCRIPTION**

The City is considering a lease agreement with a private sector tenant to lease space at 4555 North Shallowford Road.

### **BACKGROUND**

In 2012, the City of Dunwoody purchased the land and a 22,000 square foot building located at 4555 North Shallowford Road. The purchase of the building and surrounding land is part of the Project Renaissance redevelopment initiative. This particular building is located on the "19 acre property" at the corner of North Shallowford Road and Pernoshal Court. The adjacent building (located directly to the east) is likewise part of the "19 acre property" but has an existing ground lease through 2022. Based on the Project Renaissance timeline for redevelopment of this area and the ground lease of the adjacent building, staff expects that the property will not be needed for at least the next ten years.

### **ANALYSIS**

The City has the opportunity to monetize a deteriorating asset by leasing the space to a private sector company. The City has received an unsolicited offer from Emory to operate an out-patient surgery center in the building. Attached to this memorandum is a Letter of Intent (LOI) from the prospective tenant that has been signed by the City and the tenant. The LOI is not binding on either party and does not represent a contract. By its nature, an LOI is simply a framework of business terms that both parties agree should be memorialized in a formal lease agreement.

The basic terms of the lease agreement are that the City will lease the building for ten years with no obligation to extend the lease. The tenant will be responsible for all tenant improvements to the building and maintenance of the grounds at their cost. Following a six-month abatement, the City will be paid \$5.40 per sq. ft. on a monthly basis with a 2.5% annual escalation. Revenue over the 10-year period will amount to approximately \$1,200,000. Tenant has requested occupancy on October 1, 2013.

### **RECOMMENDATION**

Staff recommends the Council approve the lease agreement.

**STATE OF GEORGIA  
CITY OF DUNWOODY**

**ORDINANCE 2013-09-XX**

**AN ORDINANCE ADOPTING AND AUTHORIZING A LEASE AGREEMENT  
BETWEEN THE CITY OF DUNWOODY AND THE EMORY CLINIC FOR LEASE OF  
PROPERTY ADDRESSED AT 4555 NORTH SHALLOWFORD ROAD**

**WHEREAS,** the City of Dunwoody owns certain property whose address is 4555 North Shallowford Road, consisting of a usable office building and surrounding property, including parking lot; and

**WHEREAS,** the Emory Clinic, Inc. is a corporation that desires to utilize said property for office space to conduct its business and desires to lease said space from the City of Dunwoody for a multi-year lease term; and

**WHEREAS,** the Mayor and City Council desire to enter into a Lease Agreement, as attached hereto and incorporated herein, under its proprietary power, to lease said property to the Emory Clinic, Inc. for an agreed-upon term and lease amount; and

**WHEREAS,** Section 2.10 of the City Charter requires that any leases that encumber City of Dunwoody land be authorized by Ordinance.

**THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF  
THE CITY OF DUNWOODY AS FOLLOWS:**

Section 1. That the Lease Agreement between the City of Dunwoody and the Emory Clinic, Inc., in materially identical form as attached hereto and incorporated herein, for the lease of 4555 North Shallowford Road, is hereby approved and adopted.

Section 2. That the Mayor, City Manager and City Attorney are hereby authorized to execute all applicable and appropriate documents to effectuate the execution of said Lease Agreement.

**SO ORDAINED AND EFFECTIVE,** this 23<sup>rd</sup> day of September, 2013.

Approved:

\_\_\_\_\_  
Michael G. Davis, Mayor

**STATE OF GEORGIA  
CITY OF DUNWOODY**

**ORDINANCE 2013-09-XX**

ATTEST:

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Sharon Lowery, City Clerk

(Seal)

APPROVED AS TO FORM:

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City Attorney

Two Midtown Plaza | Suite 1100  
 1349 West Peachtree Street NE  
 Atlanta, Georgia 30309-2956

MAIN +1 404 888 9000  
 FAX +1 404 870 2845  
 www.colliers.com



September 3, 2013

Mr. Bruce Propst  
 Principal  
 Cassidy Turley  
 171 17<sup>th</sup> Street  
 Suite 1400  
 Atlanta, GA 30363

Sent via email:

Re: Offer to Lease 4555 North Shallowford Road, Dunwoody, Georgia 30338

Dear Bruce:

Thank you for your client's interest in leasing medical office space from the City of Dunwoody ( Lessor). Lessor will lease the above referenced property to The Emory Clinic, Inc., an affiliate of Emory Healthcare, Inc., (Tenant) under the following terms and conditions.

1. **Property.** 4555 North Shallowford Road, Dunwoody, GA 30338 (the "Property"), which is improved with approximately 22,000 square feet of office building on two floors.
2. **Rent.** The rent that Tenant will be obligated to pay for occupancy and use of the Property shall be \$5.40 per square foot absolute net, with 2.5% annual escalations.
3. **Operating Expenses.** Tenant shall be responsible for payment of operating expenses. The Lessor has no operating history for the building and has not operated the building. It is estimated operating expenses to be between \$5.00 and \$7.00/rsf/year subject to Tenant's use and operating hours.
4. **Term.** Ten year firm term.
5. **Rent Commencement.** May 1, 2014.
6. **Occupancy.** Upon the full execution of the lease contemplated herein, Tenant shall be granted access to the property for the purpose of constructing the necessary improvements to the Building.
7. **Option to Extend.** Tenant shall have the right to extend the lease for up to five (5) one (1) year extensions subject to the Lessor's sole discretion. Tenant shall notify the Lessor in writing no less than one year prior to the lease expiration of the primary term and any subsequent extensions of Tenant's desire to extend the lease for one additional year. Lessor in its sole discretion may approve or disapprove such proposed one year extension. Lessor will have fifteen (15) days from the date of receipt to notify the Tenant regarding the Lessor's



approval or disapproval of the request. If the Lessor does not respond in writing to the Tenant within the fifteen (15) day period, the request is automatically disapproved and the lease will end on the termination date. If the Lessor permits the first one year extension the absolute net rental rate will be the market rate for similar medical office buildings, based on criteria including Property age, age of improvements to the Property and occupied premises, condition of the Property, Property use, and other appropriate market factors, in the North Central Office Submarket of Atlanta as determined by an appraiser who has been approved by Lessor and Tenant. Once the market rate is established, the absolute net rate for any subsequent extensions will be the initial extension agreed upon market rate plus a market based annual escalation.

8. **Right to Assign and Sublease.** Tenant shall have the right at any time to sublease, assign or otherwise permit occupancy of all or any portion of its space to any related entity, subsidiary, parent company or affiliate of Tenant or Tenant's parent, any company in which Tenant or Tenant's parent has a controlling interest, or to any successor corporation, whether by merger, consolidation or otherwise or to any person who purchases all or substantially all of Tenant's assets without the Landlord's approval or consent.

In addition, Tenant shall have the right to sublease or assign all or any portion of the Premises during the initial or extended lease term to any 3rd party subtenant of a type and quality suitable for a first-class office building with Lessor's prior written consent which will not be withheld, conditioned or delayed .

9. **Access.** Tenant will be given immediate access to the Premises upon the full execution and delivery of the lease.
10. **Other Condition(s).** Condition of the property is "As is, where is". Lessor will not warranty any condition of the building or its systems including but not limited to the roof, parking lot, HVAC, structure, elevator, plumbing or electrical. It is understood by all parties that the parking immediately adjacent to and along the rear property line is shared with the adjacent medical office building whose ground lease is owned by Lessor.
11. **Disclaimer.** This letter of intent is not intended to be a binding contract and is subject to the preparation and execution of the Lease Agreement containing terms and conditions mutually acceptable to Lessee and Lessor. The terms and conditions of this proposal to lease are subject to, and contingent upon, the approval and authorization of Lessor and legal counsel. This proposal is not meant to be an offer, nor is it meant to be all inclusive or exhaustive, and only the final Lease Agreement when fully negotiated, approved and executed by all parties and delivered, will constitute a contract between the parties.




Please signify your agreement to the basic terms set forth in this letter of intent by executing where indicated below and delivering this letter to Purchaser. This offer is valid until September 4, 2013 at which time this Letter of Intent terminates and will be null and void.

Sincerely,

Tenant: 

Agreed and accepted:

By: WA. 

Its: CITY MANAGER

Date: 9/10/13

**LEASE AGREEMENT**

**between**

**CITY OF DUNWOODY, GEORGIA**

**(“Landlord”)**

**and**

**THE EMORY CLINIC, INC.**

**(“Tenant”)**

**dated**

**\_\_\_\_\_, 2013**

**for**

**4555 North Shallowford Road  
Dunwoody, Georgia 30338**

**Term: Ten (10) Years**

## LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013, between Landlord and Tenant.

### W I T N E S S E T H:

1.1. **Certain Definitions.** For purposes of this Lease, the following terms shall have the meanings hereinafter ascribed thereto:

(a) **Landlord:** CITY OF DUNWOODY, GEORGIA, a municipal corporation of the State of Georgia

(b) **Landlord's Address and Address for Payments:**

41 Perimeter Center East  
Suite 250  
Dunwoody, Georgia 30346  
Attn: Finance Director

(c) **Tenant:** THE EMORY CLINIC, INC.

(d) **Tenant's Address:**

The Emory Clinic, Inc.  
Attn: Mike Mason  
1365A Clifton Road, NE  
Suite A5000  
Atlanta, GA 30322

With a copy to:  
Adrian L. Jackson  
Associate General Counsel  
Emory University  
201 Dowman Drive  
103 Administration Building  
Atlanta, GA 30322

(e) **Property Address:**

4555 North Shallowford Road, Dunwoody, Georgia 30338.

(f) **Premises:** All of the space located in the two-story medical office building on said Property.

(g) **Rentable Floor Area of Premises:** 22,000 square feet, measured pursuant to the standard for measuring floor area in single story office buildings of similar type in Atlanta, and pursuant to ANSI/BOMA Z65.1-1996; approved June 7, 1996

(h) **Lease Term:** Ten (10) years (see Article 3);



**Commencement Date:** The date that the Lease is fully executed and delivered by the parties hereto.

**Lease Expiration Date:** April 30, 2024.

(i) **Base Rental Rate:** See Article 6.

(j) **Rental Commencement Date:** May 1, 2014

(k) **Tenant Improvement Allowance:** N/A.

(l) **Prepaid Rent**  
payable to CITY OF DUNWOODY, GEORGIA, due upon full execution of the Lease.

(i) \$9,900.00

(m) **Broker(s):** Cassidy Turley Commercial Real Estate Services, Inc.,  
representing Tenant.  
Colliers International, representing Landlord.

(n) **Base Year:** Not Applicable.

**1.2 Additional Definitions.** In addition to those terms defined in Article 1.1 and other articles of this Lease, the following defined terms when used in this Lease have the meanings indicated:

(a) “Affiliates” means, with respect to any party, any persons or entities that own or control, are owned or controlled by, or are under common landlordship or control with, such party and such party’s and each of such other person’s or entity’s respective officers, directors, shareholders, partners, venturers, members, managers, agents and employees. For purposes of this definition, a party is “owned” by anyone that owns more than 50% of the equity interests in such party and a party is “controlled” by anyone that owns sufficient voting interests to control the management decisions of such party.

(b) “Common Area” means certain exterior common and public areas located in or around the Property as may be designated by Landlord for the nonexclusive use in common by Tenant, Landlord and other tenants, and their employees, agents and invitees.

(c) “Laws” means any and all present or future federal, state or local laws, statutes, ordinances, rules, regulations or orders of any and all governmental or quasi-governmental authorities having jurisdiction.

(d) “Lease Year” means each successive period of 12 calendar months during the Term, ending on the same day and month (but not year, except in the case of the last Lease Year) as the day and month on which the Expiration Date will occur. If the Commencement Date is not the first day of a month, the first Lease Year will be greater than 12 months by the number of days from the Commencement Date to the last day of the month in which the Commencement Date occurs.

(e) “Prime Rate” means the rate of interest announced from time to time by J.P. Morgan Chase Bank, N.A., or any successor to it, as its prime rate. If J.P. Morgan

Chase Bank, N.A., or any successor to it, ceases to announce a prime rate, Landlord will designate a reasonably comparable financial institution for purposes of determining the Prime Rate.

(f) "Rent" means the Base Rent, Additional Rent and all other amounts required to be paid by Tenant under this Lease.

2. **Lease of Premises.** Landlord, in consideration of the covenants and agreements to be performed by Tenant, and upon the terms and conditions hereinafter stated, does hereby rent and lease unto Tenant, and Tenant does hereby rent and lease from Landlord, certain premises (the "Premises") in the building designated in Article 1.1 (f) herein (the "Building") located at 4555 North Shallowford Road, Dunwoody, Georgia 30338, which Premises are indicated on the Site Plan attached hereto as Exhibit "A-1", with no easement for light, view or air included in the Premises or being granted hereunder, together with rights in common with other tenants to the parking spaces located on the Land. The term "Buildings," as used herein, collectively refers to the building in which the Premises is located and all other buildings on the Land. The Term "Land", as used herein, refers to the real property described on Exhibit "A". The "Property" is comprised of the Buildings, the Land, the Property's parking facilities, any walkways, covered walkways, tunnels or other means of access to the Property and the Property's parking facilities, all common areas of the Property, and any other improvements or landscaping on the Land.

3. **Term.** The term of this Lease (the "Lease Term") shall commence on the date first hereinabove set forth (the "Commencement Date"), and, unless sooner terminated as provided in this Lease, shall end on the Lease Expiration Date designated in Article 1.1(j), which period shall commence on the Commencement Date. Promptly after the Commencement Date, Landlord and Tenant shall execute a Tenant Acceptance Agreement in the form of Exhibit "B" attached hereto and by this reference made a part hereof, specifying the Commencement Date, the date of expiration of the Lease Term in accordance with Article 1.1(j) above and certain other matters as therein set forth.

4. **Possession.** The obligations of Landlord and Tenant with respect to the initial leasehold improvements to the Premises, if any, are set forth in Exhibit "C" attached hereto and by this reference made a part hereof. Taking of possession by Tenant shall be deemed conclusively to establish that Landlord's construction obligations with respect to the Premises, if any, have been completed in general accordance with the plans and specifications approved by Landlord and Tenant, that the rentable floor area of the Premises as set forth in Article 1.1(g) is accurate, and that the Premises, to the extent of Landlord's construction obligations with respect thereto, are in good and satisfactory condition.

5. **Rental Payments.**

(a) Commencing on the Rental Commencement Date, and continuing thereafter throughout the Lease Term, Tenant hereby agrees to pay all Rent due and payable under this Lease. As used in this Lease, the term "Rent" shall mean the Base Rental (as defined in Article 6 below) and any other amounts that Tenant assumes or agrees to pay under the provisions of this Lease that are owed to Landlord, including, without limitation, any and all other sums that may become due by reason of any default of Tenant or failure on Tenant's part to comply with the agreements, terms, covenants and conditions of this Lease to be performed by Tenant. Base Rental shall be due and payable in twelve (12) equal installments on the first day of each calendar month,

commencing on the Rental Commencement Date and continuing thereafter throughout the Lease Term and any extensions or renewals thereof. Tenant hereby agrees to pay such Base Rental and such other Rent as may become due under this Lease (such other Rent being payable within five (5) business days after demand by Landlord) to Landlord at Landlord's address as provided herein (or such other address as may be designated by Landlord from time to time). Tenant shall pay all Rent and other sums of money as shall become due from and payable by Tenant to Landlord under this Lease at the times and in the manner provided in this Lease, without demand, set-off or counterclaim (except as otherwise specifically and expressly set forth in this Lease).

- (b) If the Rental Commencement Date is other than the first day of a calendar month or if this Lease terminates on a day other than the last day of a calendar month, then the installments of Base Rental for such month or months shall be prorated on a daily basis and the installment or installments so prorated shall be paid in advance.

6. **Base Rental.** Subject to adjustments in accordance with this Article, from and after the Rental Commencement Date, set forth in 1.1 above, Tenant shall pay to Landlord a base annual rental (herein called "Base Rental") equal to the Base Rental Rate set forth hereinbelow multiplied by the Rentable Floor Area of the Premises as set forth in Article 1 above.

<b><u>Annual Base Months of Term*</u></b>	<b><u>Monthly Rental (Absolute Net) PSF</u></b>	<b><u>Base Rental</u></b>
5/1/14 - 4/30/15	\$5.40 psf	\$9,900.00
5/1/15 - 4/30/16	\$5.54 psf	\$10,156.67
5/1/16 - 4/30/17	\$5.67 psf	\$10,395.00
5/1/17 - 4/30/18	\$5.82 psf	\$10,670.00
5/1/18 - 4/30/19	\$5.96 psf	\$10,926.67
5/1/19 - 4/30/20	\$6.11 psf	\$11,201.67
5/1/20 - 4/30/21	\$6.26 psf	\$11,476.67
5/1/21 - 4/30/22	\$6.42 psf	\$11,770.00
5/1/22 - 4/30/23	\$6.58 psf	\$12,063.33
5/1/23 - 4/30/24	\$6.74 psf	\$12,356.67

7. **Intentionally Reserved.**

8. **Intentionally Reserved.**

9. Tenant shall be responsible for payment of operating expenses, including real estate taxes, as Additional Rent paid to the Landlord for services provided by the Landlord or paid directly to the utility companies and other vendors providing services to the Premises.

10. **Common Areas:** Tenant and its customers and invitees shall have the non-exclusive right, in common with Landlord and all others to whom Landlord has or may hereafter grant rights, to use the Common Areas for their intended purposes, subject to such reasonable rules and regulations as Landlord may from time to time impose. Tenant shall not interfere with the rights of Landlord, and adjacent property owners to whom such rights have been or may be granted, and their employees, agents, customers and invitees, to use any part of the Common

Areas. Landlord may at any time close temporarily all or any part of the Common Areas to make repairs or changes, and Landlord may do such other acts in and to the Common Areas as in its judgment may be desirable to improve such areas, provided that said repairs, changes and other acts do not materially impact Tenant's access to and use of the Premises. Tenant acknowledges that there are certain access and drainage easements pertaining to the land upon which the driveway leading from Shallowford Road onto the Property is located which provide for the use of such driveway by the adjacent property owner (i.e., Manning Properties, Ltd., as of the date of this Lease). Landlord hereby expressly reserves the right to modify such driveway and/or any drainage or sewer lines or facilities located on the Property, in Landlord's sole discretion, provided that Tenant maintains reasonable ingress and egress onto the Property during such modification work with no material impact on Tenant's access to and use of the Premises.

11. **Payments.** All payments of Rent and other payments to be made to Landlord shall be made on a timely basis and shall be payable to Landlord or as Landlord may otherwise designate. All such payments shall be mailed or delivered to Landlord's Address designated in Article 1.1 above or at such other place as Landlord may designate from time to time in writing. If mailed, all payments shall be mailed in sufficient time and with adequate postage thereon to be received in Landlord's account by no later than the due date for such payment. Tenant agrees to pay to Landlord Fifty Dollars (\$50.00) for each check presented to Landlord in payment of any obligation of Tenant which is not paid by the bank on which it is drawn. No payment or receipt by Landlord of a lesser amount than the Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent then due and payable; nor shall any endorsement or statement on any check or any letter or other writing accompanying any check or payment be deemed an accord and satisfaction. Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Lease. Tender of Rent due after legal action has been commenced against Tenant for non-payment of Rent shall not be a defense to such action.

12. **Late Charges.** Any Rent or other amounts payable to Landlord under this Lease, if not paid by the fifth day of the month for which such Rent is due, or within five (5) days after the due date specified on any invoices from Landlord for any other amounts payable hereunder, shall incur a late charge of five percent (5%) of the past due amount or two hundred fifty dollars (\$250.00), whichever is less, for Landlord's administrative expense in processing such delinquent payment. Only one time each twelve (12) month period beginning on the Rental Commencement Date, Tenant shall be given the benefit of written notice of non-payment of Rent from Landlord and the opportunity to cure said non-payment within five (5) business days of Tenant's receipt of Landlord's notice before any late charges are applied to the past due amount. Failure to pay rent timely for more than two consecutive months shall additionally incur a 10% interest on top of the late charge.

13. **Utilities.**

(A) Landlord will provide, or cause to be provided, at points at the Premises the facilities necessary to enable Tenant to obtain for the Premises water, electricity, gas, telephone and sanitary sewer service, together with meters for all utilities in a capacity necessary for Tenant's normal business operations at the Premises. Tenant shall be solely responsible for and shall promptly pay, as and when the same become due and payable, all charges for water, sewer, electricity, gas, telephone and any other utility used or consumed in the Premises and supplied by a public utility or public authority or any other person, firm or corporation, including Landlord, supplying the same.

(B) Tenant shall not at any time overburden or exceed the capacity of the mains, feeders, ducts, conduits, or other facilities by which such utilities are supplied to, distributed in or serve the Premises. If Tenant desires to install any equipment which shall require additional utility facilities or utility facilities of a greater capacity than the facilities provided by Landlord, such installation shall be in compliance with all applicable laws, codes, ordinances and regulations and shall be subject to Landlord's prior approval of Tenant's plans and specifications therefore. If such installation is approved by Landlord, Tenant shall be responsible for installation of same in accordance with all laws, codes, rules and regulations and subject to all appropriate safety and building inspections by the Landlord. All such installations shall be at Tenant's sole expense and shall become a permanent fixture on the premises and may not be removed or otherwise separated from the premises at the expiration of this Lease and shall become the property of Landlord. Landlord shall not be liable to Tenant for damages or otherwise (i) if any utility shall become unavailable from any public utility company, public authority or any other person or entity (including Landlord) supplying or distributing such utility, or (ii) for any interruption or curtailment in any utility service (including, without limitation, any heating, ventilation, or air-conditioning) caused by the making of any necessary repairs or improvements or by any cause beyond Landlord's reasonable control, and the same shall not constitute a termination of this Lease or an eviction of Tenant. Notwithstanding anything to the contrary, if such unavailability, disruption or curtailment lasts for more than sixty (60) days, Tenant shall have the right to terminate this Lease.

14. **Use Rules.** The Premises shall be used for the operation of an ambulatory surgery center and medical and general administrative office space purposes for the Tenant and no other purposes. Tenant covenants and agrees that it will, at its expense, comply with all laws (including the Americans with Disabilities Act), ordinances, orders, directions, requirements, rules and regulations of all governmental authorities (including Federal, State, county and municipal authorities), now in force or which may hereafter be in force, which shall impose any duty upon Landlord or Tenant with respect to the use, occupancy, condition or alteration of the Premises, and of all insurance bodies applicable to the Premises or to the Tenant's use or occupancy thereof. Notwithstanding the foregoing, Tenant shall have no obligation to make any structural change to the Premises or the Building at any time, or to make any modification or alteration that would not have been required had the Premises and the Building complied with all such laws, ordinances, orders, directions, requirements, rules and regulations in force on the Commencement Date. Tenant covenants and agrees to abide by any Rules and Regulations in all respects as now set forth or as hereafter promulgated by Landlord. Landlord shall have the right at all times during the Lease Term to publish, promulgate, amend and enforce such rules and regulations or changes in the existing Rules and Regulations as it may reasonably deem necessary in its discretion to protect the tenantability, safety, operation, and welfare of the Premises and the Property.

15. **Alterations.** Except for any initial improvement of the Premises pursuant to Exhibit "C", which shall be governed by the provisions of said Exhibit "C", Tenant shall not make, suffer or permit to be made any material or structural alterations, additions or improvements to or of the Premises or any part thereof, or attach any fixtures or equipment thereto, without first obtaining Landlord's written consent. With respect to any alteration, addition or improvement which does not affect the structure of the Building, does not affect any of the Building's systems (e.g., mechanical, electrical or plumbing), does not diminish the capacity of such Building systems available to other portions of the Building, is not visible from the exterior of the Building, and is in full compliance with all laws, orders, ordinances, directions, requirements, rules and regulations of all governmental authorities, Landlord's consent shall not be unreasonably withheld or delayed. All such alterations, additions and improvements shall

become Landlord's property at the expiration or earlier termination of the Lease Term and shall remain on the Premises without compensation to Tenant, provided, however, that Tenant shall have the option to remove any specific improvements made or installed by Tenant at the end of the Lease Term, it being the express understanding between the parties that Landlord intends to demolish the Building at the expiration of the Lease Term

16. **Repairs; Maintenance.**

(a) Tenant shall keep the exterior and interior of the Premises, together with all doors, windows, ceilings, roofs and glass storefront of the Premises, and all electrical, plumbing, heating, ventilating, air conditioning, and any other mechanical installations serving the Premises or located therein, whether or not in or under the floor slab or on the roof of the Premises, in good working order and repair, at its expense. Notwithstanding the foregoing, Tenant shall promptly notify Landlord in writing of any structural repairs or repairs requiring any work on the roof, underneath the floor slab and Tenant shall have the right to make all structural repairs or repairs requiring any work on the roof, underneath the floor slab, at Tenant's expense if such repairs are required. Tenant shall not perform any work in the Premises affecting the roof and the area beneath the floor slab, if any, except with contractors specifically approved in writing by Landlord in advance of the commencement of such work. Tenant shall contract, and keep in force with a licensed service company reasonably acceptable to Landlord, a service contract for the monthly maintenance of the heating, ventilating and air conditioning equipment. A copy of the service contract shall be furnished to Landlord within ten (10) days after the Rental Commencement Date, and a copy of any subsequent contract(s) shall be furnished from time to time during the Lease Term. In the event Tenant shall fail to furnish such service contract, Landlord may procure such a contract and, upon receipt of an invoice, Tenant shall immediately reimburse Landlord the reasonable cost of the contract. Tenant shall promptly repair, at its expense, any damage to the Premises caused by bringing into the Premises any property for Tenant's use, or by the installation or removal of such property regardless of fault or by whom such damage may be caused, unless caused solely by the negligent acts or willful misconduct of Landlord, its agents or employees. In the event Tenant fails to make such repairs, Landlord may, at its option, make same and Tenant agrees to pay Landlord the cost thereof promptly upon demand by Landlord. Tenant shall not overload the floor slab, electric wiring or utilities serving the Premises and shall have installed at Tenant's sole expense, by a licensed electrician any additional electric wiring that may be required in connection with Tenant's apparatus, equipment or fixtures. Tenant shall be responsible for the cost of any and all additions, improvements, alterations, and repairs to or on the Premises.

(b) Tenant shall be responsible for general landscaping on the premises and to ensure that the premises are not in violation of any property maintenance or building and safety codes.

17. **Landlord's Right of Entry.** Landlord may, at its option, retain duplicate keys to all doors of the Premises and Landlord and its agents, employees and independent contractors shall have the right to enter the Premises at reasonable hours to inspect the Premises to ascertain that Tenant is complying with all of its covenants and obligations hereunder; provided, however, that Landlord shall, except in case of emergency, afford Tenant such prior notification of an entry into the Premises as shall be reasonably practicable under the circumstances

18. **Insurance.**

(a) **Tenant's Insurance:** Tenant shall procure at its expense and maintain throughout the Lease Term a policy or policies of commercial property insurance, issued on a "Causes of Loss – Special Form" basis insuring the full replacement cost of its furniture, equipment, supplies and other property owned, leased, held or possessed by it and contained in the Premises, together with the excess value of the improvements to the Premises over the Tenant Improvement Allowance (with a replacement cost endorsement sufficient to prevent Tenant from becoming a co-insurer), and workers; compensation insurance as required by applicable law. Tenant shall also procure at its expense and maintain throughout the Lease Term a policy or policies of commercial general liability insurance, insuring Tenant against liability for injury to or death of a person or persons and for damage to property occasioned by or arising out of any construction work being done on the Premises, or arising out of the condition, use or occupancy of the Premises, or in any way occasioned by or arising out of the activities of Tenant, its agents, contractors, employees, guests or licensees in the Premises, or other portions of the Building or the Property, the limits of such policy or policies to be for both damage to property and personal injury and in amounts not less than Two Million Dollars (\$2,000,000.00) for each claim and Five Million Dollars (\$5,000,000.00) in the aggregate per policy year. Such insurance shall, in addition, extend to any liability of Tenant arising out of the indemnities provided for in this Lease. All insurance policies procured and maintained by Tenant pursuant to this Article 17 shall name Landlord as additional insured as respects the liability of the Tenant, shall be carried with companies licensed to do business in the State of Georgia reasonably satisfactory to Landlord or through self-insurance and shall be non-cancelable and not subject to material change except after making a reasonable business effort to provide twenty (20) day' written notice to Landlord. A certificate of insurance shall be delivered to Landlord prior to the Commencement Date, and renewal certificates shall be delivered to Landlord upon request, at the expiration of each respective policy term. Any insurance required to be maintained by Tenant may be in the form of a blanket policy applicable to multiple locations, so long as the foregoing coverage requirements are satisfied without regard to any claim that may arise in connection with another location. With respect to any required coverage that is provided by a blanket policy, a certificate with respect to such coverage shall be equivalent to Tenant's provision of a copy of the policy or endorsements thereto. Should any of the insurance policies be written on a claims-basis, insurance requirements shall survive the expiration of the Agreement and extended coverage shall be afforded for at least two (2) years after the expiration of the Agreement.

(b) **Landlord's Insurance:** Landlord shall maintain fire and extended coverage insurance, insuring the Property including the Premises for 100% of replacement value and one year's loss of rents, as well as property owner's commercial general liability insurance with respect to any injury to person or property occurring on or about the Property, having occurrence limits of not less than \$2,000,000 and \$5,000,000 in the annual aggregate.

19. **Waiver of Subrogation.** Tenant shall have included in all policies of commercial property insurance, commercial general liability insurance, and business interruption and other insurance obtained covering the Premises, the Property and contents therein, a waiver by the insurer of all right of subrogation against the Landlord in connection with any loss or damage thereby insured against. Any additional premium for such waiver shall be paid by the Tenant. Anything in this Lease to the contrary notwithstanding, Landlord and Tenant each hereby waives any and all rights of recovery, claim, action or cause of action against the other for any loss or damage that may occur to the Premises or any improvements thereto, or any personal property of Landlord or Tenant, arising from any cause that (a) would be insured against under the terms of any property insurance required to be carried hereunder, or (b) is insured against under the terms

of any property insurance actually carried, regardless of whether it is required hereunder. The foregoing waiver shall apply regardless of the cause or origin of the claim, including but not limited to the negligence of a party or that party's agents, officers, employees or contractors. The foregoing waiver shall not apply if it would have the effect, but only to the extent of such effect, of invalidating any insurance coverage of Landlord or Tenant.

20. **Default.**

(a) The following events shall be deemed to be events of default by Tenant under this Lease: (i) Tenant shall fail to pay any installment of Rent or any other charge or assessment against Tenant pursuant to the terms hereof on or before the due date thereof and such failure shall continue for ten (10) business days after Tenant's receipt of written notice of such failure of payment; (ii) Tenant shall fail to comply with any term, provision, covenant or warranty made under this Lease by Tenant, other than the payment of the Rent or any other charge or assessment payable by Tenant, and shall not cure such failure within sixty (60) days after notice thereof to Tenant, or, if such failure cannot reasonably be cured within such 60-day period, within such longer period as may, with the exercise of diligence by Tenant, be required to cure such failure; (iii) Tenant or any guarantor of this Lease shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, or shall file a petition in bankruptcy, or shall be adjudicated as bankrupt or insolvent, or shall file a petition in any proceeding seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or fail timely to contest the material allegations of a petition filed against it in any such proceeding; (iv) a proceeding is commenced against Tenant or any guarantor of this Lease seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, and such proceeding shall not have been dismissed within ninety (90) days after the commencement thereof; (v) a receiver or trustee shall be appointed for the Premises or for all or substantially all of the assets of Tenant or of any guarantor of this Lease and such appointment shall not have been vacated or discharged within ninety (90) days thereafter; (vi) Tenant shall do or permit to be done anything which creates a lien upon the Premises or the Property and such lien is not removed or discharged within thirty (30) days after Tenant has knowledge of the filing thereof; (vii) a permitted transferee of this Lease refuses, upon request of Landlord, to execute a covenant of assumption of all liabilities under this Lease in a form reasonably acceptable to Landlord.

(b) Upon the occurrence of any of the aforesaid events of default and the expiration of any applicable notice and cure period, Landlord shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever: (i) terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord and if Tenant fails to do so, Landlord may without prejudice to any other remedy which it may have for possession or arrearages in Rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying said Premises or any part thereof in accordance with applicable legal procedures, without being liable for prosecution or any claim of damages therefore; (ii) terminate Tenant's right of possession (but not this Lease) and enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying said Premises or any part thereof in accordance with applicable legal procedures, without thereby releasing Tenant from any liability hereunder, without terminating this Lease, and without being liable for prosecution or any claim of damages therefore and, if Landlord so elects, make such alterations, redecorations and repairs as, in Landlord's reasonable judgment, may be necessary to relet the Premises, and Landlord shall use commercially reasonable efforts to relet the Premises or any portion thereof in Landlord's name for such term or terms (which may



be for a term extending beyond the Lease Term) and at such rental or rentals and upon such other terms as Landlord may deem advisable, with or without advertisement, and by private negotiations, and receive the rent therefore, Tenant hereby agreeing to pay to Landlord the deficiency, if any, between all Rent reserved hereunder and the total rental applicable to the Lease Term hereof obtained by Landlord re-letting, and Tenant shall be liable for reasonable costs incident to such re-letting, including reasonable broker's commissions and lease assumptions, other than costs recovered through increased rentals on reletting, and in no event shall Tenant be entitled to any rentals received by Landlord in excess of the amounts due by Tenant hereunder; or (iii) enter upon the Premises by appropriate lawful action, without being liable for prosecution or any claim of damages therefore, and do whatever Tenant is obligated to do under the terms of this Lease; and Tenant agrees to reimburse Landlord on demand for any expenses including, without limitation, reasonable attorneys' fees which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease. Tenant shall remain liable for the payment of all Rent accruing after any writ of possession as to the Premises is issued to Landlord and before the Lease is terminated.

(c) Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedy herein provided or any other remedy provided by law or at equity, nor shall pursuit of any remedy herein provided constitute an election of remedies thereby excluding the later election of an alternate remedy, or a forfeiture or waiver of any Rent or other charges and assessments payable by Tenant and due to Landlord hereunder or of any damages accruing to Landlord by reason of violation of any of the terms, covenants, warranties and provisions herein contained. Tender of Rent due after legal action has been commenced against Tenant for non-payment of Rent shall not be a defense to such action. No reentry or taking possession of the Premises by Landlord or any other action taken by or on behalf of Landlord shall be construed to be an acceptance of a surrender of this Lease or an election by Landlord to terminate this Lease unless written notice of such intention is given to Tenant. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. In determining the amount of loss or damage which Landlord may suffer by reason of termination of this Lease or the deficiency arising by reason of any reletting of the Premises by Landlord as above provided, allowance shall be made for the expense of repossession. To the fullest extent permitted by law, Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either against the other for any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises or any portion thereof, including any claim of injury or damage, and any emergency and other statutory remedy with respect thereto.

(d) Notwithstanding any other provision of this Lease to the contrary, in the event of any default by Landlord under this Lease, Tenant, in addition to any other remedies available at law or in equity, shall have an action for damages, but prior to any such action or other exercise of any remedies by Tenant, Tenant will give Landlord written notice specifying such default with particularity, and Landlord shall have thirty (30) days in which to cure any such default; provided, however, in the event any such default cannot with reasonable diligence be cured within such thirty (30) day period, Landlord shall such additional reasonable period of time as is necessary to cure such default so long as Landlord commences such cure within such thirty (30) day period and shall diligently prosecute in good faith such cure to completion. If Landlord does not cure said default within sixty (60) days after notice of such default from Tenant, then after an additional thirty (30) day notice from Tenant to Landlord notifying Landlord that

Tenant is electing one of the following remedies, Tenant may do one of the following: cure said default and offset the cost to cure said default against rent becoming due under this Lease; sue Landlord for actual damages resulting directly from Landlord's breach, or file a suit in equity to specifically enforce Tenant's rights under this Lease. Notwithstanding anything to the contrary, if Landlord has not cured any default within one hundred twenty (120) days after notice of such default from Tenant, Tenant shall have the right to terminate this Lease.

21. **Waiver of Breach.** No waiver of any breach of the covenants, warranties, agreements, provisions, or conditions contained in this Lease shall be construed as a waiver of said covenant, warranty, provision, agreement or condition or of any subsequent breach thereof, and if any breach shall occur and afterwards be compromised, settled or adjusted, this Lease shall continue in full force and effect as if no breach had occurred.

22. **Assignment and Subletting.**

(a) Tenant shall have the right at any time, with at least thirty (30) days' notice to Landlord, assign or otherwise permit occupancy of all or any portion of its space to any related entity, subsidiary, parent company or affiliate of Tenant or Tenant's parent, any company in which Tenant or Tenant's parent has a controlling interest, or to any successor corporation, whether by merger, consolidation or otherwise or to any person who purchases all or substantially all of Tenant's assets without the Landlord's approval or consent.

(b) Tenant shall have the right to sublease or assign all or any portion of the Premises during the initial or extended lease term to any 3<sup>rd</sup> party subtenant of a type and quality suitable for a first-class office building with Landlord's prior written consent, which will not be unreasonably withheld, conditioned or delayed.

(c) Unless otherwise authorized by subsection (a) or (b) of this Section, Tenant shall not, without the prior written consent of Landlord, which shall not be unreasonably withheld or delayed (but which may reasonably be withheld based upon proposed change of use, or the financial condition or business reputation of the proposed assignee), assign this Lease or any interest herein or in the Premises, or mortgage, pledge, encumber, hypothecate or otherwise transfer or sublet the Premises or any part thereof or permit the use of the Premises by any party other than Tenant. Consent to one or more such transfers or subleases shall not destroy or waive this provision, and all subsequent transfers and subleases shall likewise be made only upon obtaining the prior written consent of Landlord. Without limiting the foregoing prohibition, in no event shall Tenant assign this Lease or any interest herein, whether directly, indirectly or by operation of law, or sublet the Premises or any part thereof or permit the use of the Premises or any part thereof by any party if such proposed assignment, subletting or use would contravene any restrictive covenant (including any exclusive use granted to any other tenant of the Property prior to the date of the proposed assignment) or would contravene the provisions of Article 13 of this Lease.

(d) Assignees or transferees of the Premises for the balance of the Lease Term shall become directly liable to Landlord for all obligations of Tenant hereunder, without relieving Tenant (or any guarantor of Tenant's obligations hereunder) of any liability therefore unless otherwise agreed to in writing by the parties, and Tenant shall remain obligated for all liability to Landlord arising under this Lease during the entire remaining Lease Term including any authorized extensions thereof. If Tenant is a partnership, a withdrawal or change, whether

voluntary, involuntary or by operation of law, of partners owning a controlling interest in Tenant shall be deemed a voluntary assignment of this Lease and subject to the foregoing provisions. If Tenant is a corporation, any dissolution or other termination of the existence of Tenant, or any reorganization of Tenant pursuant to a petition in bankruptcy, or the sale or transfer of a controlling interest in the capital stock of Tenant, if such transaction would materially diminish Tenant's financial net worth, shall be deemed a voluntary assignment of this Lease and subject to the foregoing provisions. Landlord may, as a prior condition to considering any request for consent to an assignment or sublease pursuant to subsection (c), require Tenant to obtain and submit current financial statements of any proposed subtenant or assignee and such other financial documentation relative to the proposed subtenant or assignee as Landlord may reasonably require. One half of any consideration, in excess of the Rent and other charges and sums due and payable by Tenant under this Lease and expenses incurred by Tenant in connection with such assignment or subletting (including but not limited to leasing commissions, costs of making the space ready for the assignee or subtenant, and related legal fees), paid to Tenant by any assignee of this Lease for its assignment, or by any sublessee under or in connection with its sublease, or otherwise paid to Tenant by another party for use and occupancy of the Premises or any portion thereof, shall be promptly remitted by Tenant to Landlord as additional rent hereunder and Tenant shall have no right or claim thereto as against Landlord. No assignment of this Lease shall be effective unless and until Landlord shall receive an original assignment and assumption agreement, in form and substance reasonably satisfactory to Landlord, signed by Tenant and Tenant's proposed assignee, whereby the assignee assumes due performance of this Lease to be done and performed for the balance of the then remaining Lease Term of this Lease. No subletting of the Premises, or any part thereof, shall be effective unless and until there shall have been delivered to Landlord an agreement, in form and substance reasonably satisfactory to Landlord, signed by Tenant and the proposed sublessee, whereby the sublessee acknowledges the right of Landlord to continue or terminate any sublease, in Landlord's sole discretion, upon termination of this Lease, and such sublessee agrees to recognize and attorn to Landlord in the event that Landlord elects under such circumstances to continue such sublease. Upon Landlord's receipt of a request by Tenant pursuant to subsection (c) to assign this Lease or any interest herein or in the Premises or to transfer or sublet the Premises or any part thereof or permit the use of the Premises by any party other than Tenant, Landlord shall have the right, at Landlord's option, to exercise in writing any of the following options, subject to the other terms and conditions set forth in this Article 21: (a) to consent to the proposed assignment or sublease; or (b) to refuse to consent to the proposed assignment or sublease, which refusal shall be deemed to have been exercised unless Landlord gives Tenant written notice providing otherwise.

23. **Destruction.**

(a) If the Premises are damaged by fire or other casualty, the same shall be repaired or rebuilt as speedily as practical under the circumstances at the expense of Landlord, unless this Lease is terminated as provided in this Article 23, and during the period required for restoration, a just and proportionate part of Rent shall be abated until the Premises are repaired or rebuilt.

(b) If the Premises are (i) damaged to such an extent that repairs cannot, in Landlord's judgment, be completed within ninety (90) days after the date of the commencement of repair of the casualty, or (ii) damaged or destroyed as a result of a risk which is not insured under the insurance policies required hereunder, or (iii) damaged or destroyed during the last eighteen (18) months of the Lease Term to an extent such that the Premises are untenable, or (iv) if the Property or other portion(s) of the Property are damaged in whole or in part (whether or not the Premises are damaged) to such an extent that the Property or other portion(s) of the Property

cannot, in Tenant's judgment, be operated economically as an integral unit, then and in any such event either party may at its option terminate this Lease by notice in writing to the other party within sixty (60) days after the day of such occurrence. If the Premises are damaged to such an extent that Landlord would have the right to terminate this Lease pursuant to clauses (i) or (iii) of the preceding sentence, then in such event Tenant may elect to terminate this Lease by notice in writing to Landlord within sixty (60) days after the date on which Tenant receives notice of the existence of the particular circumstances that give Tenant the right to terminate this Lease. Unless Landlord or Tenant elects to terminate this Lease as hereinabove provided, this Lease will remain in full force and effect and Landlord shall repair such damage at its expense to the extent required under subparagraph (c) below as expeditiously as possible under the circumstances.

(c) If Landlord should elect or be obligated pursuant to subparagraph (a) above to repair or rebuild because of any damage or destruction, Landlord's obligation shall be limited to the original Property. If the cost of performing such repairs exceeds the actual proceeds of insurance paid or payable to Landlord on account of such casualty, Landlord may terminate this Lease.

24. **[Intentionally Omitted]**

25. **Landlord's Covenant of Quiet Enjoyment.** Provided Tenant performs the terms, conditions and covenants of this Lease, and subject to the terms and provisions hereof, Landlord covenants and agrees to take all necessary steps to secure and to maintain for the benefit of Tenant the quiet and peaceful possession of the Premises, for the Lease Term, without hindrance, claim or molestation by Landlord or any other person lawfully claiming under Landlord.

26. **Attorneys' Fees and Homestead.** In the event Landlord or Tenant defaults in the performance of any other of the terms, agreements or conditions contained in this Lease and the non-defaulting party places the enforcement of this Lease, or any part thereof, or the collection of Rent due or to become due hereunder, or the recovery of possession of the Premises, in the hands of an attorney, or files suit upon the same, and should such non-defaulting party prevail in such suit, the defaulting party, to the extent permitted by applicable law, agrees to pay the non-defaulting party all reasonable attorney's fees and court costs actually incurred by the non-defaulting party, all of which shall be awarded to the non-defaulting party by the court that enters judgment in such suit.

27. **Time.** Time is of the essence of this Lease and whenever a certain day is stated for payment or performance of any obligation of Tenant or Landlord, the same enters into and becomes a part of the consideration hereof. Unless specifically provided otherwise, all references to terms of days or months shall be construed as references to calendar days or calendar months, respectively.

28. **Subordination and Attornment.**

(a) Provided that the parties and any applicable mortgagee execute a subordination, non-disturbance and attornment agreement within thirty (30) days after the date of this Lease, Tenant agrees that this Lease and all rights of Tenant hereunder are and shall be subject and subordinate to any ground or underlying lease which may now or hereafter be in effect regarding the Property or any component thereof, to any mortgage (defined below) now or hereafter encumbering the Premises or the Property or any component thereof, to all advances made or hereafter to be made upon the security of such mortgage, to all amendments,

modifications, renewals, consolidations, extensions and restatements of such mortgage, and to any replacements and substitutions for such mortgage. Tenant, however, upon request of any party in interest, shall execute promptly such instrument or certificates as may be reasonably required to carry out the intent hereof, whether said requirement is that of Landlord or any other party in interest, including, without limitation, any mortgagee. The term "mortgage", as used in this Lease, includes any deed to secure debt, deed of trust or security deed and any other instrument creating a lien in connection with any other method of financing or refinancing. The term "mortgagee", as used in this Lease, refers to the holder(s) of the indebtedness secured by a mortgage.

(b) If any mortgagee or lessee under a ground or underlying lease elects to have this Lease superior to its mortgage or lease and signifies its election in the instrument creating its lien or lease or by separate recorded instrument, then this Lease shall be superior to such mortgage or lease, as the case may be.

(c) In the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under, any mortgage covering the Premises or the Property, or in the event the interests of Landlord under this Lease shall be transferred by reason of deed in lieu of foreclosure or other legal proceedings, or in the event of -termination of any lease under which Landlord may hold title, Tenant shall, at the option of the transferee or purchaser at foreclosure or under power of sale, or the lessor of Landlord upon such lease termination, as the case may be (sometimes hereinafter called "such person"), and subject to the proviso in the first sentence of paragraph (a) above, attorn to such person and shall recognize and be bound and obligated hereunder to such person as the Landlord under this Lease; provided, however, that no such person claiming under a mortgage that predates this Lease shall be (i) bound by any payment of Rent for more than one (1) month in advance, except prepayments in the nature of security for the performance by Tenant of its obligations under this Lease; (ii) bound by any material amendment or modification of this Lease made without the express written consent of the mortgagee or lessor of Landlord, as the case may be; (iii) obligated to cure any defaults under this Lease of any prior landlord (including Landlord); (iv) liable for any act or omission of any prior landlord (including Landlord); (v) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord); or (vi) bound by any warranty or representation of any prior landlord (including Landlord) relating to work performed by any prior landlord (including Landlord) under this Lease. Tenant agrees to execute any attornment agreement consistent herewith requested by Landlord, the mortgagee or such person. Tenant's obligation to attorn to such person shall survive the exercise of any such power of sale, foreclosure or other proceeding. Tenant agrees that the institution of any suit, action or other proceeding by any mortgagee to realize on Landlord's interest in the Premises or the Property pursuant to the powers granted to a mortgagee under its mortgage, shall not, by operation of law or otherwise, result in the cancellation or termination of the obligations of Tenant hereunder.

29. **Estoppel Certificates.** Within fifteen (15) business days after request therefore by Landlord but no more than two (2) times in a twelve (12) month period unless otherwise agreed to in writing by the parties, Tenant agrees to execute and deliver to Landlord in recordable form an estoppel certificate addressed to Landlord, any mortgagee or assignee of Landlord's interest in, or purchaser of, the Premises or the Property or any part thereof, certifying (if such be the case) that this Lease is unmodified and is in full force and effect (and if there have been modifications, that the same is in full force and effect as modified and stating said modifications); that there are no defenses or offsets against the enforcement thereof or stating those claimed by Tenant; and stating the date to which Rent and other charges have been paid. Such certificate shall also include such other information as may reasonably be required by such mortgagee,

proposed mortgagee, assignee, purchaser or Landlord. Any such certificate may be relied upon by Landlord, any mortgagee, proposed mortgagee, assignee, purchaser and any other party to whom such certificate is addressed.

30. **No Estate.** This Lease shall create the relationship of landlord and tenant only between Landlord and Tenant and no estate shall pass out of Landlord. Tenant shall have only a usufruct, not subject to levy and sale and not assignable in whole or in part by Tenant except as herein provided.

31. **Cumulative Rights.** All rights, powers and privileges conferred hereunder upon the parties hereto shall be cumulative to, but not restrictive of, or in lieu of those conferred by law.

32. **Holding Over.** If Tenant remains in possession after expiration or termination of the Lease Term with or without Landlord's written consent, Tenant shall become a tenant-at-sufferance, and there shall be no renewal of this Lease by operation of law or as otherwise provided in this Lease. During the period of any such holding over, all provisions of this Lease shall be and remain in effect except that the monthly rental shall be 150% of the amount of Rent (including any adjustments as provided herein) payable for the last full calendar month of the Lease Term including renewals or extensions. The inclusion of the preceding sentence in this Lease shall not be construed as Landlord's consent for Tenant to hold over.

33. **Surrender of Premises.** Upon the expiration or other termination of this Lease, Tenant shall quit and surrender to Landlord the Premises and every part thereof and all alterations, additions and improvements thereto, broom clean and in good condition and state of repair, reasonable wear and tear and damage by fire or other casualty excepted. Tenant shall remove all personalty and equipment not attached to the Premises which it has placed upon the Premises. If Tenant shall fail or refuse to remove all of Tenant's effects, personalty and equipment from the Premises upon the expiration or termination of this Lease for any cause whatsoever or upon Tenant being dispossessed by process of law or otherwise, such effects, personalty and equipment shall be deemed conclusively to be abandoned and may be appropriated, sold, stored, destroyed or otherwise disposed of by Landlord without written notice to Tenant or any other party and without obligation to account for them. Tenant shall pay Landlord on demand any and all reasonable expenses incurred by Landlord in the removal of such property, including, without limitation, the cost of repairing any damage to the Building or Property caused by the removal of such property and storage charges (if Landlord elects to store such property). The covenants and conditions of this Article 32 shall survive any expiration or termination of this Lease.

34. **Notices.** Except as otherwise noted herein, all notices required or permitted to be given hereunder shall be in writing and shall be deemed to have been fully given, whether actually received or not, when delivered in person, by overnight commercial courier or other commercially reasonable delivery manner, or three (3) business days after being deposited, postage prepaid, in the United States Mail, certified, return receipt requested, and addressed to Landlord or Tenant at their respective address set forth hereinabove or at such other address as either party shall have theretofore given to the other by notice as herein provided.

35. **Damage or Theft of Personal Property.** All personal property brought into the Premises by Tenant, or Tenant's employees, agents, or business visitors, shall be at the risk of Tenant only, and Landlord shall not be liable for theft thereof or any damage thereto occasioned by any act of co-tenants, occupants, invitees or other users of the Property or any other person,

unless such theft or damage is the result of a negligent act by Landlord or its employees and Landlord is not relieved therefrom by Article 18 hereof or by Exhibit "C" hereto. Landlord shall not at any time be liable for damage to any personal property in or upon the Premises, which results from gas, smoke, water, rain, ice or snow which issues or leaks from or forms upon any part of the Property or from the pipes or plumbing work of the same, or from any other place whatsoever, unless Landlord has failed to make repairs, after reasonable notice thereof, that would have avoided such damage within a reasonable time after Landlord had notice of the need for such repairs. Landlord is not, in any respect whatsoever, a provider of security to Tenant, Tenant's personhood, or Tenant's property.

36. **Eminent Domain.** (a) If all or part of the Premises shall be taken for any public or quasi-public use by virtue of the exercise of the power of eminent domain or by private purchase in lieu thereof, this Lease shall terminate as to the part so taken as of the date possession is required to be surrendered to the condemning authority, and, in the case of a partial taking, either Landlord or Tenant shall have the right to terminate this Lease as to the balance of the Premises by written notice to the other within thirty (30) days after such date; provided, however, that a condition to the exercise by Tenant of such right to terminate shall be that the portion of the Premises taken shall be of such extent and nature as substantially to handicap, impede or impair Tenant's use of the balance of the Premises. If title to so much of the Property is taken that a reasonable amount of reconstruction thereof will not in Landlord's or Tenant's discretion result in the Property or other portion of the Property being a practical improvement and reasonably suitable for use for the purpose for which it is designed, then this Lease shall terminate on the date that the condemning authority actually takes possession of the part so condemned or purchased.

(b) If this Lease is terminated under the provisions of this Article 36, Rent shall be apportioned and adjusted as of the date of termination. Tenant shall have no claim against Landlord or against the condemning authority for the value of any leasehold estate or for the value of the unexpired Lease Term provided that the foregoing shall not preclude any claim that Tenant may have against the condemning authority for the unamortized cost of leasehold improvements, to the extent the same were installed at Tenant's expense (and not with the proceeds of the Tenant Improvement Allowance), or for loss of business, moving expenses or other consequential damages, in accordance with subparagraph (d) below.

(c) If there is a partial taking of the Property and this Lease is not thereupon terminated under the provisions of this Article 36, then this Lease shall remain in full force and effect, and Landlord shall, within a reasonable time thereafter, repair or reconstruct the remaining portion of the Property to the extent necessary to make the same a complete architectural unit; provided, that in complying with its obligations hereunder, Landlord shall not be required to expend more than the net proceeds of the condemnation award which are paid on account of Landlord's interest in the Property.

(d) All compensation awarded or paid to Landlord upon a total or partial taking of the Premises or the Property shall belong to and be the property of Landlord without any participation by Tenant. Nothing herein shall be construed to preclude Tenant from prosecuting any claim directly against the condemning authority for loss of business, for damage to, and cost of removal of, trade fixtures, furniture and other personal property belonging to Tenant, and for the unamortized cost of leasehold improvements to the extent the same were installed at Tenant's expense.

(e) Notwithstanding anything to the contrary contained in this Article 36, if, during the Lease Term, the use or occupancy of any part of the Property or the Premises shall be taken or appropriated temporarily for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, this Lease shall be and remain unaffected by such taking or appropriation and Tenant shall pay the proportional amount of Rent payable hereunder by Tenant during the Lease Term. In the event of any such temporary appropriation or taking, Tenant shall be entitled to receive that portion of any award which represents compensation for the loss of use or occupancy of the Premises during the Lease Term, and Landlord shall be entitled to receive that portion of any award which represents the cost of restoration and compensation for the loss of use or occupancy of the Premises after the end of the Lease Term.

37. **Parties.** The term “Landlord”, as used in this Lease, shall include Landlord and its successors and assigns. It is hereby covenanted and agreed by Tenant that should Landlord’s interest in the Premises cease to exist for any reason during the Lease Term, then notwithstanding the happening of such event, this Lease nevertheless shall remain in full force and effect, and Tenant hereby agrees to attorn to the then Landlord of the Premises. The term “Tenant” shall include Tenant and its successors assignees and sublessees, if this Lease shall be validly assigned or the Premises sublet for the balance of the Lease Term or any renewals or extensions thereof. In addition, Landlord and Tenant covenant and agree that Landlord’s right to transfer or assign Landlord’s interest in and to the Premises, or any part or parts thereof, shall be unrestricted, and that in the event of any such transfer or assignment by Landlord which includes the Premises, Landlord’s obligations to Tenant hereunder shall cease and terminate as of the date of said transfer or assignment, and Tenant shall look only and solely to Landlord’s assignee or transferee for performance thereof.

38. **Mutual Indemnity.** Tenant hereby indemnifies Landlord from and agrees to hold Landlord harmless against, any and all liability, loss, cost, damage or expense, including, without limitation, court costs and reasonable attorneys’ fees, to the extent permitted by law, imposed on Landlord by any person whomsoever, caused in whole or in part by any act or omission of Tenant, or any of its employees, contractors, servants, agents, subtenants, assignees, representatives or invitees, or otherwise occurring in connection with any default of Tenant hereunder. The provisions of this Article 38 shall survive any expiration or termination of this Lease. To the extent permissible by law, Landlord hereby indemnifies Landlord Tenant and agrees to hold Tenant harmless against, any and all liability, loss, cost, damage or expense, including, without limitation, court costs and reasonable attorneys’ fees, to the extent permitted by law, imposed on Landlord by any person whomsoever, caused in whole or in part by any act or omission of Landlord, or any of its employees, contractors, servants, agents, subtenants, assignees, representatives or invitees, or otherwise occurring in connection with any default of Landlord hereunder. The provisions of this Article 38 shall survive any expiration or termination of this Lease.

39. **Relocation of Premises.** Intentionally Deleted

40. **Force Majeure.** In the event of strike, lockout, labor trouble, civil commotion, Act of God, or any other cause beyond a party’s control (collectively “force majeure”) resulting in Landlord’s inability to supply the services or perform the other obligations required of Landlord hereunder for less than fifteen days, this Lease shall not terminate and Tenant’s obligation to pay Rent and all other charges and sums due and payable by Tenant shall be excused for a period equal to such delay and during such period Tenant shall not be considered to



be in default under this Lease, and Landlord's performance shall be excused for a period equal to such delay and during such period Landlord shall not be considered to be in default under this Lease.

41. **Landlord's Liability.** Landlord shall have no personal liability with respect to any of the provisions of this Lease. If Landlord is in default with respect to its obligations under this Lease, Tenant shall look solely to the equity of Landlord in and to the Property and the Land for satisfaction of Tenant's remedies, if any. It is expressly understood and agreed that Landlord's liability under the terms of this Lease shall in no event exceed the amount of its interest in and to said Land and Buildings. In no event shall any officer, employee or official of Landlord be personally liable with respect to any of the provisions of this Lease.

42. **Prepaid Rent.** \$9,900.00 due upon full execution of the Lease.

43. **Condominium Acknowledgment.** N/A

44. **Hazardous Substances.** (a) Tenant hereby covenants and agrees that Tenant shall not cause or permit any "Hazardous Substances" (as hereinafter defined) to be generated, placed, held, stored, used, located or disposed of at the Property or any part thereof, except for Hazardous Substances as are commonly and legally used or stored as a consequence of using the Premises for ambulatory surgery and general medical office and administrative purposes, but only so long as the quantities thereof do not pose a threat to public health or to the environment or would necessitate a "response action", as that term is defined in CERCLA (as hereinafter defined), and so long as Tenant strictly complies or causes compliance with all applicable governmental rules and regulations concerning the use or production of such Hazardous Substances. For purposes of this Article 43, "Hazardous Substances" shall mean and include those elements or compounds which are contained in the list of Hazardous Substances adopted by the United States Environmental Protection Agency (EPA) or the list of toxic pollutants designated by Congress or the EPA which are defined as hazardous, toxic, pollutant, infectious or radioactive by any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability (including, without limitation, strict liability) or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereinafter in effect (collectively "Environmental Laws"). Tenant hereby agrees to indemnify Landlord and hold Landlord harmless from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, Landlord by any person, entity or governmental agency for, with respect to, or as a direct or indirect result of, the presence in, or the escape, leakage, spillage, discharge, emission or release from, the Premises of any Hazardous Substances brought onto the Premises by Tenant, or its agents, representatives, or employees (including, without limitation, any losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act ["CERCLA"], any so-called federal, state or local "Superfund" or "Superlien" laws or any other Environmental Law); provided, however, that the foregoing indemnity is limited to matters arising solely from Tenant's violation of the covenant contained in this Article. The obligations of Tenant under this Article shall survive any expiration or termination of this Lease.

(b) Landlord represents that, except as might otherwise be set forth in environmental reports delivered by Landlord to Tenant, if any, (i) Landlord has not treated, stored or disposed of any Hazardous Substances upon or within the Premises, (ii) to Landlord's actual knowledge

without investigation, no Hazardous Substances are present on or under the Building as of the date of this Lease, and (iii) Landlord has not received any notice from any governmental or regulatory unit alerting Landlord of a Hazardous Substances condition upon or within the Premises.

45. **Submission of Lease.** The submission of this Lease for examination does not constitute an offer to lease and this Lease shall be effective only upon execution hereof by Landlord and Tenant.

46. **Severability.** If any clause or provision of the Lease is illegal, invalid or unenforceable under present or future laws, the remainder of this Lease shall not be affected thereby, and in lieu of each clause or provision of this Lease which is illegal, invalid or unenforceable, there shall be added as a part of this Lease a clause or provision as nearly identical to the said clause or provision as may be legal, valid and enforceable.

47. **Entire Agreement.** This Lease contains the entire agreement of the parties and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. No failure of either party to exercise any power given such party hereunder, or to insist upon strict compliance by the other party with any obligation of the other party hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of the right to demand exact compliance with the terms hereof. This Lease may not be altered, waived, amended or extended except by an instrument in writing signed by Landlord and Tenant pursuant to the provisions hereof. This Lease is not in recordable form, and Tenant agrees not to record or cause to be recorded this Lease.

48. **Headings.** The use of headings herein is solely for the convenience of indexing the various paragraphs hereof and shall in no event be considered in construing or interpreting any provision of this Lease.

49. **Broker.** The Brokers [as defined in Article 1.1(o)] are entitled to a leasing commission from Landlord by virtue of this Lease, which leasing commission shall be paid by Landlord to Brokers in accordance with the terms of a separate agreement between Landlord and Brokers. Tenant hereby authorizes Brokers and Landlord to identify Tenant as a tenant of the Property and to state the amount of space leased by Tenant in advertisements and promotional materials relating to the Property. Tenant represents and warrants to Landlord that [except with respect to any Broker identified in Article 1.1(o) hereinabove, which has acted as agent for Tenant (and not for Landlord) in this transaction] no broker, agent, commission salesperson, or other person has represented Tenant in the negotiations for and procurement of this Lease and of the Premises and that [except with respect to any Brokers identified in Article 1.1(o) hereinabove] no commissions, fees or compensation of any kind are due and payable in connection herewith to any broker, agent, commission salesperson or other person as a result of any act or agreement of Tenant. Tenant agrees to indemnify and hold Landlord harmless from all loss, liability, damage, claim, judgment, cost or expense (including reasonable attorneys' fees and court costs) suffered or incurred by Landlord as a result of a breach by Tenant of the representation and warranty contained in the immediately preceding sentence or as a result of Tenant's failure to pay commissions, fees or compensation due to any broker who represented Tenant, whether or not disclosed, or as a result of any claim for any fee, commission or similar compensation with respect to this Lease made by any broker, agent or finder [other than the Broker identified in Article 1.1(o) hereinabove] claiming to have dealt with Tenant, whether or not such claim is meritorious. The parties hereto do hereby acknowledge and agree that Colliers International has

acted as agent for Landlord in this transaction and shall be paid a commission by Landlord in connection with this transaction pursuant to the terms of a separate written commission agreement. Colliers International has not acted as agent for Tenant in this transaction. Landlord hereby warrants and represents to Tenant that Landlord has not dealt with any broker, agent or finder other than Colliers International in connection with this Lease, and, Landlord hereby agrees to indemnify and hold Tenant harmless, to the extent authorized by law, from and against any and all loss, damage, liability, claim, judgment, cost or expense (including, but not limited to, reasonable attorneys' fees and court costs) that may be incurred or suffered by Tenant because of any claim for any fee, commission or similar compensation with respect to this Lease made by any broker, agent or finder claiming to have represented Landlord.

50. **Governing Law.** The laws of the State of Georgia shall govern the construction, interpretation, validity, performance, and enforcement of this Lease.

51. **Authority.** If Tenant executes this Lease as a corporation, Tenant does hereby represent and warrant that Tenant is a duly incorporated or a duly qualified (if a foreign corporation) corporation and is (or will be not later than the Commencement Date) fully authorized and qualified to do business in the State in which the Premises are located, that the corporation has full right and authority to enter into this Lease, and that each person signing on behalf of the corporation is an officer of the corporation and is authorized to sign on behalf of the corporation. If Tenant signs as a partnership, joint venture or sole proprietorship or other business entity (each being herein called "Entity"), Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing Entity, that Tenant has full right and authority to enter into this Lease, that all persons executing this Lease on behalf of the Entity are authorized to do so on behalf of the Entity, and that such execution is fully binding upon the Entity and its partners, joint venturers or principal, as the case may be. Upon the request of Landlord, Tenant shall deliver to Landlord documentation satisfactory to Landlord evidencing Tenant's compliance with this Article, and Tenant agrees to promptly execute all necessary and reasonable applications or documents as reasonably requested by Landlord, required by the jurisdiction in which the Premises is located, to permit the issuance of necessary permits and certificates for Tenant's use and occupancy of the Premises.

52. **Miscellaneous.** If Tenant comprises more than one person, corporation, partnership or other entity, the liability hereunder of all such persons, corporations, partnerships or other entities shall be joint and several. The terms and provisions of this Lease shall not be construed against or in favor of a party hereto merely because such party is the "Landlord" or the "Tenant" hereunder or such party or its counsel is the draftsman of this Lease. Any claim, cause of action, liability or obligation arising under the terms of this Lease and under the provisions hereof in favor of a party hereto against or obligating the other party hereto shall survive the expiration or earlier termination of this Lease. Notwithstanding any other provision of this Lease to the contrary, in the event of any default by Landlord under this Lease, Tenant's sole and exclusive remedy shall be an action for actual damages (Tenant hereby waiving any right of deduction or setoff against Rent due Landlord), but prior to any such action Tenant will give Landlord (and any mortgagee to which Landlord has requested Tenant give such notices) written notice specifying such default with particularity, and Landlord shall then have thirty (30) days in which to cure any such default; provided, however, in the event any such default cannot with reasonable diligence be cured within such thirty day period, Landlord shall have such additional reasonable period of time as is necessary to cure such default so long as Landlord commences such cure within such thirty day period and shall diligently prosecute in good faith such cure to completion. Unless and until Landlord fails to so cure any default after such notice, Tenant shall not have any remedy or cause of action by reason thereof. Tenant agrees to accept the cure by

Landlord's mortgagee if the mortgagee elects, in its sole discretion, to undertake the cure of such defaults within the time available to Landlord for such cure, but Tenant acknowledges that the mortgagee is under no obligation to do so. Prior to any action that Landlord has acted unreasonably in withholding, delaying or conditioning Landlord's consent to any request of Tenant under this Lease, Tenant shall give Landlord fifteen (15) day prior written notice and shall work in good faith to resolve the dispute. Nothing in this Lease is deemed to make or imply that Landlord and Tenant are partners or joint venturers. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation hereof or a termination by Landlord pursuant to the terms of this Lease, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subleases or subtenancies, or may, at the option of Landlord, operate as an assignment to it of any or all such subleases or subtenancies. This Lease may be executed in any number of counterparts, each of which shall be deemed an original and any of which shall be deemed to be complete in itself and may be introduced into evidence or used for any purpose without the production of the other counterparts. Any claim, cause of action, liability or obligation arising under the term of this Lease and under the provisions of this Lease in favor of a party hereto against or obligating the other party hereto shall survive any expiration or termination of this Lease. The content of each and every exhibit which is referenced in this Lease is incorporated into this Lease as fully as if set forth in the body of this Lease.

53. **Patriot Act:** Tenant (which for this purpose includes its partners, members, principal stockholders and any other constituent entities) (i) has not been designated as a "specifically designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <<http://www.treas.gov/ofac/t11sdn.pdf>> or at any replacement website or other replacement official publication of such list; (ii) is currently in compliance with and will at all times during the term of this Lease (including any extension thereof) remain in compliance with the regulations of the Office of Foreign Asset Control of the Department of the Treasury and any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action relating thereto; and (iii) has not used and will not use funds from illegal activities for any payment made under the Lease.

54. **Special Stipulations.** To the extent the special stipulations attached hereto as Exhibit "E" (if none, so state) conflict with or are inconsistent with the foregoing provisions of this Lease or any exhibit to this Lease, the special stipulations shall control.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and seals as of the day, month and year first above written.

**“LANDLORD”:**

CITY OF DUNWOODY, GEORGIA

By: \_\_\_\_\_  
Michael G. Davis  
Mayor

**“TENANT”:**

THE EMORY CLINIC, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT "A"**

**PROPERTY  
LEGAL DESCRIPTION**

**TRACT 2A  
Tax Parcel 18-344-01-007**

Being all that tract or parcel of land lying and being in Land Lot 344, of the 18<sup>th</sup> District of DeKalb County, Georgia, and being more particularly described as follows:

To find the Point of Beginning, commence at a 1" crimp top pipe found at the common corner of Land Lots 344, 345, 352 and 353 of the aforesaid District; thence, leaving the said point and running with the westerly line of said Land Lot 344 and along the property now or formerly owned by Dekalb-Lake Ridge, LLC as described in a deed recorded among the Land Records of DeKalb County, Georgia in Deed Book 17650, Page 759, South 01° 44' 14" West, 279.73 feet to the easterly right of way of North Shallowford Road (having a 80' Right of Way); thence, running along the said easterly right of way of North Shallowford Road, 244.34 feet along the arc of a curve deflecting to the right, having a radius of 2,071.45 feet and a chord bearing and distance of South 45° 16' 42" East, 244.20 feet to the northerly right of way of Pernoshal Court (having a 60' Right of Way); thence leaving the northerly right of way of Pernoshal Court and running along a tie line of South 41° 05' 02" East, 60.01 feet to a 1/2" iron rod found at the intersection of the aforesaid easterly right of way of North Shallowford Road and the southerly right of way of aforesaid Pernoshal Court, said point being the True Point of Beginning of the below described tract or parcel of land; thence, leaving the said Point of Beginning and running along the aforesaid southerly right of way of Pernoshal Court the following courses and distances: North 47° 52' 55" East, 198.18 feet to a 1/2" rebar found; thence, 98.93 feet along the arc of a curve deflecting to the right, having a radius of 271.56 feet and a chord bearing and distance of North 58° 19' 06" East, 98.38 feet to a 1/2" rebar found; thence, leaving the aforesaid southerly right of way of Pernoshal Court and running along the property now or formerly owned by the City of Dunwoody as described in a deed recorded among the aforesaid Land Records in Deed Book 23098, Page 743, South 39° 19' 10" East, 265.71 feet to a 1/2" rebar found; thence, South 04° 58' 50" West, 32.10 feet; thence, South 50° 18' 20" West, 217.30 feet; thence, South 63° 09' 50" West, 53.55 feet to a 1/2" rebar found on the aforesaid easterly right of way of North Shallowford Road; thence, running along the aforesaid easterly right of way of North Shallowford Road, North 40° 01' 14" West, 281.95 feet to a 1/2" iron rod, and the Point of Beginning.

Containing 87,002 square feet or 1.9973 acres of land, more or less.

Property is subject to all easements and rights of way recorded and unrecorded.



**EXHIBIT "B"**

**TENANT ACCEPTANCE AGREEMENT**

This Agreement is an amendment to the Lease Agreement (the "Lease") for space in the property addressed at 4555 North Shallowford Road, dated \_\_\_\_\_, 2013 by and between CITY OF DUNWOODY, GEORGIA as Landlord, and The Emory Clinic, Inc. as Tenant.

Pursuant to the provisions of Article 3 of the Lease, Landlord and Tenant hereby mutually agree that:

1. Tenant is in possession of, and has accepted the Premises. The Premises are tenantable, the Landlord has no further obligation for construction or repairs, except for items listed on a punch list approved by both parties.
2. The Commencement Date of the Lease is hereby agreed to be the date the Lease is fully executed and delivered by the parties hereto.
3. The Rental Commencement Date of the Lease is hereby agreed to be May 1, 2014.
4. The Expiration Date of the Lease is hereby agreed to be April 30, 2024.
5. The rentable square footage is hereby agreed to be 22,000 rsf.
6. All other terms and conditions of the Lease are hereby ratified and acknowledged to be unchanged.

Agreed and Executed this \_\_\_\_ day of \_\_\_\_\_, 2013.

Tenant: EMORY CLINIC, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Landlord: CITY OF DUNWOODY, GEORGIA

By: \_\_\_\_\_

Michael G. Davis, Mayor

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Witness)



**EXHIBIT C****LEASEHOLD IMPROVEMENTS AGREEMENT****I. Word Performed by Landlord.** None.

**II. Work Performed by Tenant.** Landlord shall permit Tenant and any of Tenant's space planners, architects, engineers, contractors, suppliers, employees, agents and other such parties (collectively, "Tenant's Contractors") to enter the Premises upon Commencement Date of the Lease in order to make the Premises ready for Tenant's use and occupancy, subject to the other provisions hereof and of the Lease. Prior to commencing construction, Tenant shall acquire all necessary permits therefor and conform with all applicable Federal, State and local laws, and provide the construction plans to Landlord for approval, which shall not be unreasonably denied. All such construction by Tenant shall be at Tenant's expense and any damage by Tenant due to said construction shall be remedied by Tenant at Tenant's expense and in conformance with all of the provisions of the Lease.

**III. Definitions.** The following terms herein shall have the following meanings:

(a) "Planner" means the space planner, architect and/or engineer, as the context implies.

(b) "Plans" means the "Development Plan" and/or "Construction Drawings" as the context implies. Upon Landlord's approval of any Construction Drawings, the term "Plans" shall refer to such Construction Drawings, which shall supersede the Development Plan. The Plans shall be signed or initialed by Tenant, if requested by Landlord.

(c) "Development Plan" means, to the extent reasonably required by the nature of the Work, a detailed floor plan (including any so-called "Pricing Plan"), drawn to scale, showing: (i) demising walls, interior walls and other partitions, including type of wall partition and height, and any demolition or relocations of walls, (ii) doors and other openings in such walls or partitions, including type of door and hardware, (iii) any floor or ceiling openings, and any variations to Building Standard floor or ceiling heights, (iv) electrical outlets, and any restrooms, kitchens, computer rooms, file cabinets, file rooms and other special purpose rooms, and any sinks or other plumbing facilities, or other special electrical, HVAC, plumbing or other facilities or equipment, including all special loading, (v) location and dimensions of communications equipment room, and electrical and HVAC requirements therefore, (vi) special cabinet work or other millwork items, (vii) finish selections, and (viii) any other details or features reasonably required or reasonably requested by Architect, Engineer or Landlord in order for the Development Plan to serve as a basis for preparing Construction Drawings.

(d) "Construction Drawings" means, to the extent reasonably required by the nature of the Work, fully dimensioned architectural construction drawings and specifications, and any required engineering drawings (including mechanical, electrical, plumbing, air-conditioning, ventilation and heating), and shall include any applicable items described above for the Development Plan, and to the extent applicable: (i) electrical outlet locations, circuits and anticipated usage therefore, (ii) reflected ceiling plan, including lighting, switching, and any special ceiling specifications, (iii) duct locations for heating, ventilating and air-conditioning equipment, (iv) details of all millwork, if any (v) dimensions of all equipment and cabinets to be built in, (vi) furniture plan showing details of space occupancy, (vii) keying schedule, (viii) lighting arrangement, (ix) location of print machines, equipment in lunch rooms, concentrated file

and library loadings and any other equipment or systems (with brand names wherever possible) which require special consideration relative to air-conditioning, ventilation, electrical, plumbing, structural, fire protection, life-fire-safety system, or mechanical systems, (x) special heating ventilating and air conditioning equipment and requirements, (xi) weight and location of heavy equipment, and anticipated loads for special usage rooms, (xii) demolition plan, (xiii) partition construction plan, (xiv) all governmental requirements, and (xv) final finish selections, and (xvi) any other details or features reasonably required or reasonably requested by Landlord's Planner or Landlord in order for the Construction Drawings to serve as a basis for contracting the Work.

(e) "Work" means: (i) the improvements and items of work in the Premises shown on the final approved Plans (including changes thereto), (ii) any demolition, preparation or other work required in connection therewith, including without limitation, structural or mechanical work, additional HVAC equipment, or modifications to the center's mechanical, electrical, plumbing or other systems and equipment, either within or outside the Premises required as a result of the layout, design, or construction of the Work or in order to extend any mechanical distribution, fire protection or other systems from existing points of distribution or connection, or in order to obtain building permits for the work to be performed within the Premises (unless Landlord requires that the Plans be revised to eliminate the necessity for such work), (iii) installation of voice and data cabling, and (iv) installation of interior, exterior and monument signage. Notwithstanding the foregoing to the contrary, any personal property, trade fixtures or business equipment including, but not limited to, modular or other furniture, and cabling for communications or computer systems, whether or not shown on the Plans, shall be provided by Tenant, at Tenant's sole cost.

#### **IV. Miscellaneous**

(a) General Matters. This Exhibit is intended to supplement and be subject to the provisions of the Lease, including, without limitation, those provisions requiring that any modification or amendment be in writing and signed by authorized representatives of both parties.

(b) Compliance with Laws. The Work shall be in compliance with all applicable laws, ordinances and regulations, including but not limited to the Americans with Disabilities Act.

(c) Tenant Costs. Tenant shall be solely responsible of any costs for improvements.

**EXHIBIT "D"****RULES AND REGULATIONS**

1. Tenant agrees that its use of electrical current shall not exceed the capacity of existing feeders, risers or wiring installation.
2. The Premises shall not be used for storage of merchandise held for sale to the general public. Tenant shall not do or permit to be done in or about the Premises or Property anything which shall increase the rate of insurance on said Property. The Premises shall not be used for sleeping or lodging. No cooking or related activities shall be done or permitted by Tenant in the Premises except with permission of Landlord. Tenant will be permitted to use for its own employees within the Premises a small microwave oven and Underwriters' Laboratory approved equipment for brewing coffee, tea, hot chocolate and similar beverages, provided that such use is in accordance with all applicable federal, state, county and city laws, codes, ordinances, rules and regulations. No part of said Property or Premises shall be used for gambling, immoral or other unlawful purposes. No intoxicating beverage shall be sold in said Property or Premises without the prior written consent of Landlord. No area outside of the Premises shall be used for storage purposes at any time.
3. No birds or animals of any kind shall be brought into the Building (other than trained service dogs). No bicycles, motorcycles or other motorized vehicles shall be brought into the Building.
4. The sidewalks, entrances, passages, corridors, halls and stairways, if any, in the Property shall not be obstructed by Tenant or used for any purposes other than those for which same were intended as ingress and egress. Toilets, wash basins and sinks shall not be used for any purpose other than those for which they were constructed, and no sweeping, rubbish or other obstructing or improper substances shall be thrown therein. Any damage resulting to them, or to heating apparatus, from misuse by Tenant or its employees, shall be borne by Tenant.
5. Upon commencement of the lease, Landlord will provide one (1) key for the Premise to the Tenant. As soon as reasonable, the Tenant, at its sole expense shall pay to have the external doors to the premise re-cored and return the existing cores (and furnished key) to the Landlord. Tenant shall then make one (1) key for the Premises available to the Landlord without charge. No additional lock, latch or bolt of any kind shall be placed upon any door nor shall any changes be made in existing locks without written consent of Landlord, which consent shall not be unreasonably withheld or delayed, and Tenant shall in each such case furnish Landlord with a key for any such lock.
6. Landlord shall have the right to prescribe the weight, position and manner of installation of heavy articles such as safes, machines and other equipment brought into the Building. In no event shall any weight be placed upon any floor by Tenant so as to exceed four thousand (4,000) pounds per square foot.
7. Tenant shall not cause or permit any gases, liquids or odors to be produced upon or permeate from the Premises, and no flammable, combustible or explosive fluid, chemical,

substance or item (including, without limitation, natural Christmas trees) shall be brought onto the Property.

8. Cleaning service shall be furnished by Tenant's janitorial contractors at Tenant's sole cost and expense. Landlord shall not be responsible for any loss, theft, mysterious disappearance of or damage to, any property, however occurring.
9. No connection shall be made to the electric wires or gas or electric fixtures, without the consent in writing on each occasion of Landlord. All glass, locks and trimmings in or upon the doors and windows of the Premises shall be kept whole and in good repair. Tenant shall not injure, overload or deface the Property, the woodwork or the walls of the Premises, nor permit any noisome, noxious, noisy or offensive business.
10. If Tenant requires wiring for a bell or buzzer system, such wiring shall be done by a licensed electrician
11. All vehicles shall be parked only in areas designated therefore by Landlord. Tenant will, if and when so requested by Landlord, furnish Landlord with the license numbers of any vehicles of Tenant, any subtenant or licensee and their respective officers, employees, contractors and agents. Landlord may remove, at Tenant's expense, any vehicles which are parked or abandoned in violation of the rules and regulations promulgated by Landlord from time to time. Landlord reserves the right, at any time and from time to time, to close temporarily all or any portions of the parking areas when in Landlord's reasonable judgment any such closing is necessary or desirable (i) to make repairs or changes to effect construction, (ii) to prevent the acquisition of public rights in such area, (iii) to discourage unauthorized parking, or (iv) to protect or preserve natural persons or property.
12. Intentionally left blank.
13. Landlord may waive any one or more of these Rules and Regulations, but no such waiver by Landlord shall be construed as to prevent Landlord from thereafter enforcing any such Rules and Regulations against Lessee.
14. These Rules and Regulations are supplemental to, and shall not be construed to in any way modify or amend, in whole or in part, the terms, covenants, agreements and conditions of this Lease.
15. Landlord reserves the right to make such other and reasonable Rules and Regulations as in its judgment may from time to time be needed for the safety, care and cleanliness of the Buildings and the Land, and for the preservation of good order therein so long as they do not impair ability of Tenant to conduct its normal business.

**EXHIBIT "E"**  
**SPECIAL STIPULATIONS**

To the extent the special stipulations attached hereto conflict with or are inconsistent with the foregoing provisions of this Lease or any exhibit to this Lease, the special stipulations shall control.

1. **Renewal Options:** Tenant shall have the right to extend the Lease for up to five (5) one (1) year extensions subject to the Landlord's sole discretion. Tenant shall notify the Landlord in writing at least 180 days prior to the expiration of the initial Lease Term and any subsequent extensions of Tenant's desire to extend the Lease for one additional year. Landlord in its sole discretion may approve or disapprove such proposed one-year extension. Landlord will have fifteen (15) days from the date of receipt of the Notice to extend from Tenant to notify the Tenant regarding Landlord's approval or disapproval of the request. If the Landlord does not respond in writing to the Tenant within this fifteen (15) day period, the request is automatically disapproved and the Lease will end on the termination date of the Initial Lease Term or any one-year extension. If Landlord permits the first one year Extension, the net Base Rental Rate will be the market rate for similar medical office buildings, based on criteria including property age, age of improvements to the property and occupied premises, condition of the property, property use and other appropriate market factors in the Central Perimeter office submarket of Atlanta as determined by an appraiser who has been approved by Landlord and Tenant. Once the market rate is established, the net Base Rental Rate for any subsequent extensions will be the initial extension agreed upon market plus market-based annual escalation.

3. **Janitorial.** Tenant at its sole cost and expense shall arrange janitorial services be provided to the Premises.

4. **Access.** Tenant will be given immediate access to the Premises upon the full execution and delivery of the lease. Tenant shall have unimpeded access to the Property for its intended use pursuant to the Lease 24 hours per day, seven (7) days per week, 365 days per year.

5. **Security.** Acknowledging that Tenant's use of the Premises may include after-hours access to the Premises, Tenant agrees to provide, at its sole cost and expense, such security as Tenant and/or its insurer deems reasonable, and Tenant agrees to indemnify and save harmless Landlord from any claims or damages attributable to Tenant's after-hours use of the Premises.

6. **CONDITIONS.** TENANT ACCEPTS THE PROPERTY "AS IS, WHERE IS." LANDLORD WILL NOT WARRANTY ANY CONDITION OF THE BUILDING OR ITS SYSTEMS, INCLUDING BUT NOT LIMITED TO THE ROOF, PARKING LOT, HVAC, STRUCTURE, PLUMBING OR ELECTRICAL.

7. **PARKING.** TENANT HEREBY ACKNOWLEDGES THAT THE TWENTY-THREE (23) PARKING SPACES IMMEDIATELY ADJACENT TO AND ALONG THE REAR PROPERTY LINE, AS SHOWN ON THE SURVEY ATTACHED HERETO AS EXHIBIT "F", ARE SHARED ON A NON-EXCLUSIVE BASIS WITH THE ADJACENT MEDICAL OFFICE BUILDING WHOSE GROUND LEASE IS OWNED BY LANDLORD. TENANT SHALL HAVE THE EXCLUSIVE USE OF ALL OTHER PARKING SPACES (APPROXIMATELY EIGHTY-THREE (83) AS SHOWN ON EXHIBIT "F") THAT ARE ADJACENT TO OR IN CLOSE PROXIMITY TO THE PREMISES DURING BUSINESS HOURS, 6 A.M. TO 7 P.M., MONDAY THROUGH FRIDAY. HOWEVER, ON NIGHTS AND

WEEKENDS AND HOLIDAYS, LANDLORD RESERVES THE RIGHT TO UTILIZE SAID PARKING SPACES AT ITS DISCRETION AND OF ITS PURPOSES AND RESERVES THE RIGHT TO DO SO EXCLUSIVELY.

8. Signage. Tenant shall have the right to place signage on the Building and the right to install a monument sign at the corner of North Shallowford Road and Pernoshal Court, subject to applicable sign regulations. Tenant shall have the right to install directional signage on the Property, as needed, to direct Tenant's visitors to the Building and the Building entrances. Tenant will submit renderings and plans of all signs to Landlord for approval, said approval not to be unreasonably withheld or delayed. All signage Tenant desires shall be subject to the regulations of the City Sign Ordinance as if the property was owned by a private party.